

USER'S GUIDE

TO THE

INDIANA REGISTER

— AND —

INDIANA ADMINISTRATIVE CODE

The User's Guide to the Indiana Register and Indiana Administrative Code is intended for use by users of the Indiana Register (IR) website and agency personnel involved in the rulemaking process in order to answer frequently asked questions about the IR website and to provide up-to-date explanations of the various procedures used in the rulemaking process. The User's Guide is intended as a source of information only and will be updated periodically on an as-needed basis.

— **OCTOBER 21, 2022** —

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**INDIANA REGISTER AND INDIANA ADMINISTRATIVE CODE
LEGISLATIVE SERVICES AGENCY
INDIANA GOVERNMENT CENTER NORTH
100 NORTH SENATE AVENUE, ROOM N201
INDIANAPOLIS, INDIANA**

MAILING ADDRESS:

**LEGISLATIVE SERVICES AGENCY
INDIANA REGISTER AND ADMINISTRATIVE CODE DIVISION
200 WEST WASHINGTON STREET, SUITE 301
INDIANAPOLIS, IN 46204**

INDIANA REGISTER AND ADMINISTRATIVE CODE DIVISION

Register Staff Contact Information

Heather Jarrett
(317) 232-9557
heather.jarrett@iga.in.gov

Staci Yockey
(317) 232-9564
staci.yockey@iga.in.gov

I. INTRODUCTION

The Legislative Services Agency is the official publisher of the Indiana Register and the Indiana Administrative Code under the direction of the Legislative Council. The Indiana Register and Indiana Administrative Code are exclusively published online. Each can be accessed through the Indiana General Assembly website or directly at iac.iga.in.gov/iac/. The website has links to the Administrative Drafting Manual and the latest version of the User's Guide.

The Administrative Drafting Manual is prepared by the Legislative Services Agency and approved by the Indiana Code Revision Commission. The Administrative Drafting Manual gives information on the proper style and format for rule writing for the Indiana Register and Indiana Administrative Code.

This User's Guide will give information on the different types of documents, rulemaking process, submission of documents for publication, and how to use the Indiana Register and Indiana Administrative Code website.

II. BRIEF HISTORY OF RULEMAKING IN INDIANA

Establishment of Uniform Rulemaking Procedures

Prior to 1943, uniform rulemaking procedures were nonexistent. Early statutes conferring rulemaking power on state agencies were occasionally designed to ensure public access to rules, but little else. The earliest of these statutes, the 1881 Health Board Act (Acts 1881, Chapter 19), merely required that rules be "promulgated". Other statutes, such as the law creating the Livestock Commission (Acts 1889, Chapter 212) and the Labor Commission (Acts 1897, Chapter 88), required availability for inspection and, with some exceptions, printing of rules. The most comprehensive of the early efforts applied to the Railroad Commission and its successor, the Public Service Commission. Acts 1905, Chapter 53, required the Railroad Commission to furnish each railway company with copies of rules twenty days before they were to take effect. Rights to notice, hearing, and public participation were added in 1913 (Acts 1913, Chapter 76) when the railroads and other utilities were brought under the control of the Public Service Commission. Rules promulgated in conformity with these statutes were to be admissible as evidence in Indiana courts. However, these statutes were not generally used as models for other rulemaking legislation.¹

In this early period, Indiana courts were more concerned with the substance of rules than the procedures for their adoption. See, *Fertich v. Michener* (1887), 111 Ind. 472, 11 N.E. 605. Procedural matters concerning rulemaking and administrative adjudication were thought to be discretionary, depending upon the exigencies of the situation in which an administrative agency might find itself. It was thought that because the legislature could make rules without special public hearings beyond those constitutionally required for the conduct of legislative business, agencies could, too. See, *Vandalia Railroad v. Public Service Commission of Indiana* (1916), 242 U.S. 255, 61 L.Ed. 276. As late as 1938, the courts were still holding that administrative rulemaking was merely part of the administrative duties of an agency, and no additional procedural safeguards were necessary beyond those in the existing statutes. See, *Financial Aid Corporation v. Wallace* (1939), 216 Ind. 114, 23 N.E. 472. In 1943, the Indiana General Assembly took its first step toward establishing uniform rulemaking procedures. Acts 1943, Chapter 213 ("1943 Act") required that all rules adopted after November 3, 1943, be approved and filed prior to becoming effective. Rules were to be approved by the Attorney General and the Governor and filed with the Secretary of State and the Legislative Bureau. When promulgated in conformity with these procedures, the rule was to be admissible as evidence in any court proceeding after certification by the Secretary of State.

Soon after the passage of the 1943 Act, Governor Gates and Attorney General Emmert authorized a study commission within the Attorney General's office to examine the entire field of administrative law. Comprehensive revision was found impossible to implement before the 1945 session of the Indiana General Assembly, so the study commission concentrated on administrative rulemaking. Revision of the administrative adjudication process was left to the 1947 session.

In the 1945 session, the Indiana General Assembly enacted Acts 1945, Chapter 120 ("1945 Act"). The 1945 Act reenacted the 1943 Act's provisions concerning approval and filing and enacted additional uniform procedures similar to those in an early draft of the Model Administrative Procedures Act adopted by the National Commission on Uniform State Laws in 1946. Subsequently, the 1945 Act was codified as IC 4-22-2 and, with significant amendments and additions made in 1985, continues in force today.

The State's initial effort to publish an official codification of rules was authorized by the 1945 Act. The 1945 Act required the Secretary of State to compile, index, and publish all rules in effect on January 1, 1946. This initial code was to be supplemented each year by a cumulative pocket-part supplement.

The Secretary of State published Indiana's first official codification of rules on January 1, 1947, under the title *Indiana Rules and Regulations*. In each subsequent year through 1979, that office published a noncumulative supplement under the title *Additions and Revisions to Rules and Regulations*. Ordinarily, rules filed with the Secretary of State in a particular calendar year were published in the following year's supplement in an uncoded form. In a few cases, lengthy rules were not published at all. Except in 1947, rules were neither indexed nor codified. The Secretary of State published the last noncumulative supplement in 1979. This volume contained rules filed with that office from January 1, 1978, through May 15, 1978.

Between 1977 and 1981, the Indiana General Assembly enacted a series of amendments to IC 4-22-2 that established a new method of publication for state rules. Rules filed with the Secretary of State, proposed rules, emergency rules, and selected other documents, such as official opinions of the Attorney General and executive orders of the Governor, were to be published by the Legislative Council in the *Indiana Register*. In addition, the Legislative Council was to annually compile, computerize, index, and publish Indiana's rules in an edition of the *Indiana Administrative Code* or a cumulative supplement to the *Indiana Administrative Code*. The Legislative Council began publication of the *Indiana Register* on July 1, 1978, and continued to publish it on a monthly basis through the July 1, 2006, *Indiana Register*. The *Indiana Register* is now published on the Internet only and on a more frequent basis. The Legislative Council published the first *Indiana Administrative Code* in 1979 and supplemented it through 1983 with a

soft-bound cumulative supplement.

The 1979 edition of the *Indiana Administrative Code* codified all agency rules in effect on December 31, 1978. With the assistance of the Code Revision Commission, chaired by Senator Leslie Duvall, the Legislative Council compared all rules filed with the Secretary of State after January 1, 1946, against the text of the 1947 Edition of *Indiana Rules and Regulations* to identify all rules in effect. These rules were arranged and numbered in code format and submitted to the agencies having jurisdiction over them for certification. Certified rules were then compiled in the 1979 Edition. IC 4-22-9-3(c) provides that rules "filed with the secretary of state before December 2, 1978, and not compiled in the 1979 edition of the *Indiana Administrative Code* are void".

The 1984 edition was the first recompilation of the *Indiana Administrative Code*. It replaced the 1979 edition of the *Indiana Administrative Code* and its 1983 cumulative supplement.

The 1988 edition was the second recompilation of the *Indiana Administrative Code* and replaced the 1984 edition of the *Indiana Administrative Code* and its 1987 cumulative supplement.

The 1992 edition was the third recompilation of the *Indiana Administrative Code* and replaced the 1988 edition of the *Indiana Administrative Code* and its 1991 cumulative supplement.

The 1996 edition was the fourth recompilation of the *Indiana Administrative Code* and replaced the 1992 edition of the *Indiana Administrative Code* and its 1995 cumulative supplement.

The 2001 edition was the fifth recompilation of the *Indiana Administrative Code* and replaced the 1996 edition of the *Indiana Administrative Code* and its 2000 cumulative supplement.

The 2003 edition, published in CD-ROM format, was the sixth recompilation of the *Indiana Administrative Code* and replaced the 2001 edition and its 2002 supplement.

The 2004 edition was the seventh recompilation of the *Indiana Administrative Code* and replaced the 2003 edition.

The 2005 edition, published in CD-ROM format, was the eighth recompilation of the *Indiana Administrative Code* and replaced the 2004 edition.

The 2006 edition, on the Indiana General Assembly's website, was the ninth recompilation of the *Indiana Administrative Code* and replaced the 2005 edition.

The 2007 edition, on the Indiana General Assembly's website, was the tenth recompilation of the *Indiana Administrative Code* and replaced the 2006 edition.

The 2008 edition, on the Indiana General Assembly's website, was the eleventh recompilation of the *Indiana Administrative Code* and replaced the 2007 edition.

The 2009 edition, on the Indiana General Assembly's website, was the twelfth recompilation of the *Indiana Administrative Code* and replaced the 2008 edition.

The 2010 edition, on the Indiana General Assembly's website, was the thirteenth recompilation of the *Indiana Administrative Code* and replaced the 2009 edition.

The 2011 edition, on the Indiana General Assembly's website, was the fourteenth recompilation of the *Indiana Administrative Code*, contains all agency rules in effect after December 31, 1978, through agency rules filed through December 31, 2010, and replaced the 2010 edition.

The 2012 edition, on the Indiana General Assembly's website, was the fifteenth recompilation of the *Indiana Administrative Code*, contains all agency rules in effect after December 31, 1978, through agency rules filed through December 31, 2011, and replaced the 2011 edition.

The 2013 edition, on the Indiana General Assembly's website, was the sixteenth recompilation of the *Indiana Administrative Code*, contains all agency rules in effect after December 31, 1978, through agency rules filed through December 31, 2012, and replaced the 2012 edition.

The 2014 edition, on the Indiana General Assembly's website, was the seventeenth recompilation of the *Indiana Administrative Code*, contains all agency rules in effect after December 31, 1978, through agency rules filed through December 31, 2013, and replaced the 2013 edition.

The 2015 edition, on the Indiana General Assembly's website, was the eighteenth recompilation of the *Indiana Administrative Code*, contains all agency rules in effect after December 31, 1978, through agency rules filed through December 31, 2014, and replaced the 2014 edition.

The 2016 edition, on the Indiana General Assembly's website, was the nineteenth recompilation of the *Indiana Administrative Code*, contains all agency rules in effect after December 31, 1978, through agency rules filed through December 31, 2015, and replaced the 2015 edition.

The 2017 edition, on the Indiana General Assembly's website, was the twentieth recompilation of the *Indiana Administrative Code*, contains all agency rules in effect after December 31, 1978, through agency rules filed through December 31, 2016, and replaced the 2016 edition.

The 2018 edition, on the Indiana General Assembly's website, was the twenty-first recompilation of the *Indiana Administrative Code*, contains all agency rules in effect after December 31, 1978, through agency rules filed through December 31, 2017, and replaced the 2017 edition.

The 2019 edition, on the Indiana General Assembly's website, was the twenty-second recompilation

of the *Indiana Administrative Code*, contains all agency rules in effect after December 31, 1978, through agency rules filed through December 31, 2018, and replaced the 2018 edition.

The 2020 edition, on the Indiana General Assembly's website, was the twenty-third recompilation of the *Indiana Administrative Code*, contains all agency rules in effect after December 31, 1978, through agency rules filed through December 31, 2019, and replaced the 2019 edition.

The 2021 edition, on the Indiana General Assembly's website, was the twenty-third recompilation of the *Indiana Administrative Code*, contains all agency rules in effect after December 31, 1978, through agency rules filed through December 31, 2020, and replaced the 2020 edition.

The 2022 edition, on the Indiana General Assembly's website, was the twenty-four recompilation of the *Indiana Administrative Code*, contains all agency rules in effect after December 31, 1978, through agency rules filed through December 31, 2021, and replaced the 2021 edition.

Since the posting of the 2022 edition, the *Indiana Administrative Code* has been updated in the Latest Update edition on the Indiana General Assembly's website as Final Rules, Readopted Final Rules, code Emergency Rules, and Agency Corrections have become effective.

The *Indiana Administrative Code* is the only available publication containing all of Indiana's current rules. At various times, a private publisher, The Bobbs-Merrill Company, Inc., supplemented the Secretary of State's efforts with an unofficial compilation of rules. In 1941, Professor Frank E. Horack, Jr. of the Indiana University School of Law made an exhaustive search of state office files and collected the rules he found into a loose-leaf publication under the title *Indiana Administrative Code*. It was supplemented until 1947 and discontinued. In 1967, at the suggestion of the Secretary of State and with his cooperation, Bobbs-Merrill resumed publication of rules under the titles *Burns' Indiana Administrative Rules and Regulations, Annotated* and *Burns' Indiana Administrative Rules and Regulations, Code Edition*. This publication was discontinued in 1978.

¹A detailed review of Indiana's experience with administrative rulemaking prior to 1962 is contained in an article published in the *Indiana Law Review* by P. Allan Dionisopoulos entitled "Procedural Safeguards in Administrative Rule Making in Indiana" (37 Ind. L.J. 423 (1962)). Professor Dionisopoulos's article was especially helpful in the preparation of this brief history of Indiana rulemaking.

III. USER'S GUIDE TO THE INDIANA ADMINISTRATIVE CODE

General Information

1. OFFICIAL PUBLICATION STATUS: The Indiana Administrative Code (IAC) is an official publication. IC 4-22-9-3(b) provides that publication in the IAC "shall be considered prima facie evidence that the rule was adopted in conformity with IC 4-22-2 and that the text published is the text adopted".

2. PUBLICATION ARRANGEMENTS: Arrangements for publication of the IAC were made by the Indiana Legislative Council under IC 4-22-8-11. In making its decisions, the council relied heavily on the recommendations of the Indiana Code Revision Commission, an advisory body. The IAC posted on the Indiana General Assembly's website includes the text of all unrepealed and unexpired permanent rules that have not been voided by legislative action. Beginning July 2006, the IAC has been updated weekly as Final Rules (FR), Readopted Final Rules (RF), code Emergency Rules (ER), and Agency Corrections (AC) have become effective.

2.5. NONCODE EMERGENCY RULES ARRANGEMENT:

Starting in 2019, under the direction of the Indiana Code Revision Commission, a current list of noncode ERs can be found under the authorizing IAC title. The list for the authorizing IAC title is updated when an ER is posted on the Indiana General Assembly's website. The list includes a short digest that includes the effective date of the ER, an expiration date if applicable, and links to the text of the ER. Unless otherwise provided by the statute authorizing adoption of an ER, an ER adopted under IC 4-22-2-37.1 expires not later than ninety (90) days after the rule is accepted for filing with the Publisher. An ER adopted under IC 4-22-2-37.1 may be extended by adopting another rule under IC 4-22-2-37.1, but only for one (1) extension period. For a complete list of IAC titles that have ER making authority, see the [Emergency Authority List](#) posted on the Indiana General Assembly's website.

3. PUBLICATIONS REPLACED BY THE INDIANA ADMINISTRATIVE CODE POSTED ON THE INDIANA GENERAL ASSEMBLY'S WEBSITE: The 2022 edition of the IAC is obsolete. Unrepealed, unexpired, and unamended rule text appearing in the 2022 edition of the IAC has been republished in the Latest Update edition of the IAC posted on the Indiana General Assembly's website. To this body of text has been added the latest version of added or amended rule text as FRs, RFs, code ERs, and ACs have become effective. The 2022 edition of the IAC and all previous publications of the Indiana Register (IR) are now of historical interest only.

4. SUPPLEMENTATION: The IAC is updated by the IR.

Editorial Policy

1. OFFICIAL RULE TEXT: Rule text is published in the IAC as adopted, without any intentional deviations. Nonsubstantive style matters, such as the scheme of numbering and capitalization used in some provisions, have been changed to bring them into conformity with the style of the IAC. Other matters have been referred to the issuing agency for remedial action.

2. ANNOTATIONS: As an aid to the reader, the IAC contains a series of annotations that are not part of the official text of any adopted rule (see explanation of annotations on page 11). IC 4-22-9-4

provides that they "are not part of the official text of any rule, are not intended to affect the meaning, application, or construction of any rule, and may be altered at any time by the Publisher of the Indiana Register or Indiana Administrative Code".

3. UNPUBLISHED RULE TEXT: The IAC does not contain the text of noncode temporary rules. Neither does it contain material that is incorporated by reference into a permanent rule. Noncode rules are published only in the IR. The text of material incorporated by reference is not published in the IR. However, the IR contains a notation following the published version of each rule document, as applicable, indicating whether the full text of incorporated matter is available in the office of the secretary of state or, for documents filed after June 30, 2006, is available for inspection and copying in the office of the appropriate state agency.

4. NONCODE RULES: Noncode rules are not included in the IAC and are not considered part of the general and permanent rule text. If a rule document has general application, but is not permanent by statute, it is considered temporary and may be drafted as a noncode rule. Temporary, noncode rules generally include provisions that contain a specific termination date that is not more than five (5) years after the effective date, provide for transitional or implementary matters as an emergency provision to a permanent rule, or terminate by implication when their purpose is fulfilled or ceases to exist. Noncode rules are published only in the IR.

5. DELETION OF NONCURRENT RULE TEXT: After rule text is included in the IAC, it is retained until expressly repealed by the action of the issuing agency or voided by the Indiana General Assembly or until it expires under IC 4-22-2.5 or IC 13-14-9.5, which states that an administrative rule adopted under IC 4-22-2 or IC 13-14-9, respectively, expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. When rule text is amended, the later version replaces the text of the former version.

6. COPYRIGHT: The IR website contains certain materials that are copyrighted by Thomson West under United States law. The section headings and authority and affected lines may not be copied, reproduced, or reprinted without the permission of Thomson West, except as provided under U.S. Copyright law. To obtain permission to copy, reproduce, or reprint copyrighted material described above, contact Thomson West at 610 Opperman Drive, Eagan, Minnesota 55123. Beginning in 2002, with Volume 25 of the *Indiana Register*, the section headings and authority and affected lines for new and amended sections are prepared by the state agencies and reviewed by the Publisher and are not subject to a copyright by Thomson West.

Organizational Scheme

1. ARRANGEMENT: The IAC contains over one hundred fifty (150) groupings of rules called "titles". Each title contains the rules of one (1) agency. For the purpose of making rules, an "agency" is a governmental body that is given separate authority to issue rules, even if the body is administratively organized as part of another body. Titles are organized into successively smaller units by subject matter. Rule text in a title is arranged into one (1) or more articles, rule text within each article is arranged into one (1) or more rules, and rule text in each rule is arranged into one (1) or more sections. Regardless of when they are issued, related subject matters are grouped together.

2. CITATIONS: Citations to the IAC involve the use of a four-part number for each section. The four (4) parts (separated by dashes) designate (in order) the title, article, rule, and section in which the rule text is arranged.

3. DESIGNATIONS: The divisions within a section, usually referred to as "designations", are not part of an IAC citation. The drafting style developed by the Legislative Council allows paragraphs in a section to be grouped and designated as subsections. Phrases within a paragraph are vertically listed and designated into successively subordinate units called subdivisions, clauses, items, and subitems. A series of tables, pieces of artwork, exhibits, footnotes, equations, or formulas within a paragraph are consecutively designated as a separate series in each section. However, particularly in text issued on or before December 1, 1978, the publishing deadline for the 1979 edition, other designation schemes may be used within a section.

4. ASSIGNMENT OF CITATIONS AND DESIGNATIONS: Initially, the agency issuing a rule assigns its IAC citations and designations. Before it is published in the IR, the Publisher reviews the numbering scheme and reassigns IAC citation numbers and designations, as necessary, to bring the text into conformity with the style developed by the Legislative Council. Once assigned, an IAC citation number is permanently associated with the same subject matter. Designations, on the other hand, may change as needed to maintain consecutive series. All amendments to a section are assigned the same IAC citation. Provisions that supplement the subject of an article or rule are assigned to the same article or rule. When text expires, is voided, or is repealed from the IAC, its associated citation is retired. Except when rule text is saved and transferred by the Indiana General Assembly, rule text may be renumbered only by expressly repealing it by IAC citation and readopting it under a different IAC citation.

5. DECIMAL CITATIONS: When a citation is originally assigned to an added title, article, or rule, only whole numbers are used. As provisions are added to the title, article, or rule by subsequent action, decimal numbers are sometimes used to locate rule text near a previously added provision. For example, Article 9.5 will follow Article 9 and precede Article 10. As an aid to the user, the notation "(Reserved)" has been inserted wherever a whole number citation is unused in a series of whole numbers. However, the notation is not inserted for unused decimal citations.

6. RENUMBERING TRANSFERRED RULES: The rules of an agency are transferred and renumbered as the rules of a successor agency only if the Indiana General Assembly expressly saves and transfers the rules by statute. Rules shown as transferred before August 12, 1987, but not expressly saved and transferred by statute, have been reinserted under their original IAC citation numbers. Annotations have been inserted to document each renumbering action.

Annotations: Headings

1. TEXT HEADINGS: Prior to 2002, the rule text in each title, article, rule, and section was preceded by a heading prepared by Thomson West; beginning in 2002, with Volume 25 of the *Indiana Register*, the headings are prepared by the state agencies and reviewed by the Publisher. Each heading consists of a citation number component and a descriptive component. The citation number component reflects the IAC citation number assigned by the Publisher to the text. The descriptive component in a title heading is the official name of the agency assigned by statute. The descriptive component in each of the other headings contains a brief subject matter description of the text in the article, rule, or section, as applicable.

2. PROMULGATED HEADINGS: Some rule text, particularly rule text issued before publication of the 1979 edition, contains adopted section headings and subsection headings in addition to the headings added by Thomson West. Beginning January 1, 1983, the Publisher's policy has been to treat these headings as improperly formatted annotations and to eliminate all promulgated headings as text is

added or amended. Under the authority in IC 4-22-8-4, the Publisher may reformat, renumber, or revise rule text before it is published in final form in the IR.

3. HEADINGS FOR DELETED RULE TEXT: When rule text is deleted from the IAC the heading preceding the text is retained with a note explaining the deletion. The following table summarizes the most common heading notes appearing in the IAC:

NOTE	EXPLANATION
Agency Abolished	The Indiana General Assembly has terminated all of the authority of an agency to act and has not saved and transferred the rules of the agency to another agency.
Expired	Under IC 4-22-2.5 or IC 13-14-9.5, the rule has expired.
Reinstated	The Indiana General Assembly has reinstated previously repealed rules of an agency.
Repealed	The agency has expressly repealed the provision by rule.
Statutory Authority Repealed	The Indiana General Assembly has repealed the authorizing statute.
Transferred	The Indiana General Assembly has transferred jurisdiction over part or all of the powers and duties of an agency to another agency and has saved the related rules of the prior agency and transferred them to the successor agency related to the subject.
Voided	The Indiana General Assembly has expressly voided part or all of the rules of an agency.

Additional Section Annotations

1. STANDARD SECTION ANNOTATIONS: Each section containing text is accompanied by a section heading, authority and affected lines, a section designation, and a history line.

2. AUTHORITY AND AFFECTED LINES: Related Indiana statutory laws are cross-referenced in authority and affected lines preceding rule text. Citations that delegate rulemaking authority to an agency are arranged in the authority line. Other provisions that are cited within the text of the section or are otherwise closely related to the subject matter of the section are arranged in the affected line.

3. CHANGES TO AUTHORITY AND AFFECTED LINES: When it is necessary to change an authority or affected line because of a recodification of an Indiana Code (IC) statute or a repeal of an IC cite, the Publisher will make the necessary changes when there is a clear disposition of the cite. When an authority or affected line cite is repealed in an IC recodification and there is no clear disposition of the cite, the agency may contact the Publisher with the replacement cites. The Publisher will then make the necessary changes. It is not necessary to amend an IAC section just to change the authority

and affected lines, which are not official text and may be altered at any time by the Publisher. (IC 4-22-9-4)

Incorrect IC cites in the text of IAC sections may be corrected by an agency correction under IC 4-22-2-38(a)(2). NOTE: The Publisher routinely inserts editorial notes after incorrect cites but does not have the statutory authority to change them.

4. HISTORY LINES: The history line includes the name of the agency currently having jurisdiction to amend, repeal, or readopt the section, the citation number initially assigned to the section by the agency filing it with the Secretary of State before July 1, 2006, or, for documents filed after June 30, 2006, the Publisher, and filing and publication information for each action that either added, amended, or readopted text in the section. History line information is deleted from the IAC when a section is repealed or expires under IC 4-22-2.5 or IC 13-14-9.5. The following table explains the history line citations used to summarize a section's filing and publication history:

EXAMPLE	EXPLANATION
filed Jan 15, 2000, 10:40 a.m.	Date and time a rule document was filed with the Secretary of State or, after June 30, 2006, the Publisher.
Rules and Regs. 1971, p. 95	Year of publication and page number on which an addition or amendment of the section was printed in the Secretary of State's publication <i>Indiana Rules and Regulations</i> (1947) or <i>Additions and Revisions to Rules and Regulations</i> . (Applies to rules issued before May 16, 1978.)
Unpublished	Indicates that an addition or amendment affecting a section was not published in <i>Indiana Rules and Regulations</i> (1947) or <i>Additions and Revisions to Rules and Regulations</i> . (Applies to rules issued before May 16, 1978.)
25 IR 1266	Volume and page number on which an addition, amendment, agency correction, or readoption of the section was printed in an issue of the <i>Indiana Register</i> . (Applies to rules issued after May 15, 1978, through rules published in the July 1, 2006, <i>Indiana Register</i> .)
Document Identification Number	See an explanation of the Document Identification Number (DIN) in Section IV of this guide.
eff Jul 1, 2003	Appears only if a delayed effective date provision was contained in a rule document that added or amended the section. Always follows the reference to the publication in which the affected rule text was published. Statutory effective dates are not referenced.

emergency rule	Indicates that an addition or amendment affecting the section was issued under special rulemaking procedures that exempt it from part or all of the notice, public hearing, approval, or effective date provisions applying to most rules.
errata	Indicates an Agency Correction was filed under IC 4-22-2-38 with the Secretary of State or, after June 30, 2006, the Publisher, or that a Publisher's Correction was published under IC 4-22-8-4.
readopted	Indicates a readoption document was filed with the Secretary of State or, after June 30, 2006, the Publisher.
adopted	Indicates an agency rulemaking not promulgated under IC 4-22-2.

4. PUBLISHER'S NOTES: Publisher's notes may be inserted to expand upon the information contained in an authority or affected line or history line. One (1) or more Publisher's notes may follow or be included in a history line. However, Publisher's notes never indicate whether a section is enforceable. Related statutory law and case law must be researched independently to ascertain the force and effect of a section.

5. BRACKETED INTERNAL REFERENCES AND OTHER BRACKETED NOTES: Bracketed internal references usually are inserted in rule text to translate or update obsolete and inaccurate internal references to Indiana statutes or rules. The Publisher routinely inserts bracketed internal references to indicate that the Publisher has renumbered a provision that is cross-referenced in a rule. The Publisher also routinely follows a reference to an Act of the Indiana General Assembly or to an IC citation that has been renumbered by the Indiana General Assembly with the appropriate current IC citation. The Publisher does not translate references to federal statutes, federal rules, or case decisions. Other bracketed notes may appear in the text. For example, if an obvious typographical, clerical, or spelling error appears in the adopted version of a rule, the error is retained in the text followed by the notation "[sic]".

IV. DOCUMENT IDENTIFICATION NUMBER

After July 1, 2006, each document that has been posted on the Indiana Register (IR) website has been assigned a unique document identification number (DIN). The Publisher creates a DIN by making consistent use of the following conventions:

This typical DIN describes a Final Rule that was posted on the IR website on December 23, 2015:

20151223-IR-410150039FRA

This Final Rule document would add a new rule that amends Title 410 of the Indiana Administrative Code (IAC) and was assigned LSA document #15-39, which is padded with extra zeros (150039) for the DIN to create a nine (9) digit number when combined with the title number (410150039). This means that this was the thirty-ninth document filed with the Publisher by a state agency in 2015.

Since this was the first document posted with respect to this document number on the specified date, the DIN ends with a wild card (A). (See explanation of DIN components in Part A.)

Each individual document that is posted on the IR website is internally paginated and stored in a PDF format. This permits citation to the DIN and any specific page within the document that is being referenced.

The Indiana supreme court is considering whether any changes are necessary with respect to the court's rules for citing documents published in the IR under its new format.

Breakdown of Components in the Above Example:

2015	Year of posting on the IR website
12	Month of posting on the IR website
23	Day of posting on the IR website
-IR-	Indiana Register
410	Entity identifier (IAC title number or a 3-letter designation)
150039	A six-digit LSA document number, the first two (2) digits referencing the year the number was assigned followed by four (4) digits that are assigned sequentially as documents are submitted to the Publisher for publishing throughout that calendar year.
FR	Type of document (Final Rule in the above example)
A	Wild card. Most DINs will end in the letter A.

List of Letter-Designated Entities in a DIN

Letters, instead of numbers, are assigned when an entity, without rulemaking authority under IC 4-22-2 or IC 13-14-9, publishes a document under IC 4-22-7-7. For entities, or divisions of entities, with rulemaking authority publishing a document under IC 4-22-7-7, the title number for that entity or umbrella entity will be used instead of letter characters. For instance, the Indiana Recount Commission is a division of the Secretary of State (Title 75 IAC), so the Publisher would assign 075 to the document for the Commission. The list that follows consists of entities that have published an Other Notice (ON) or Nonrule Policy Document (NR) in the IR since October 1999. Entities that have an umbrella entity with an IAC title number are not listed below.

GOV	=	Governor (Executive Orders and Proclamations)
LSA	=	Legislative Services Agency

List of Document Type Suffixes in a DIN

AC	=	Agency Correction
AF	=	Publisher's Receipt for Filed Document
AO	=	Attorney General's Opinions
AR	=	IC 4-22-2-19 and IC 4-22-2-25 Notices
AT	=	Request for Additional Time (Governor)
BF	=	IDEM Final Readoption
BN	=	IDEM Notice of Readoption
BP	=	IDEM Proposed Readoption
CH	=	Change in Notice of Public Hearing
DA	=	Disapproval by Attorney General
DG	=	Disapproval by Governor
EI	=	Economic Impact Statement
EO	=	Executive Orders
ER	=	Emergency Rule
FC	=	IDEM Continuation of First Notice
FD	=	IDEM Findings and Determinations
FI	=	IDEM Fiscal Impact Statement
FN	=	IDEM First Notice
FR	=	Final Rule
GP	=	Governor's Proclamations
NA	=	Notice of Rule Adoption
ND	=	Rule Activity Notice
NI	=	Notice of Intent to Adopt a Rule
NR	=	Nonrule Policy Document
OA	=	Objection to Errata (Attorney General)
OG	=	Objection to Errata (Governor)
ON	=	Other Notice
PC	=	Publisher's Correction
PH	=	Notice of Public Hearing
PR	=	Proposed Rule
RC	=	Notice of Recall
RF	=	Readopted Final Rule
RN	=	Notice of Intent to Readopt

RP	=	Readopt Proposed Rule
SC	=	IDEM Continuation of Second Notice
SN	=	IDEM Second Notice
WD	=	Notice of Withdrawal

V. RELATION OF THE INDIANA REGISTER TO THE INDIANA ADMINISTRATIVE CODE

The Indiana Register (IR) is an official publication of the state of Indiana. The full text of Proposed Rules, Final Rules, and other documents, such as Executive Orders and Attorney General's Opinions, is published in the IR in the order in which the Publisher receives the documents.

The Indiana Administrative Code (IAC) is an official publication of the state of Indiana. It codifies the current general and permanent rules of state agencies in subject matter order.

The IR acts as a source of information about the rules being proposed by state agencies and acts as an advance notice to the IAC. With few exceptions, an agency may not adopt a rule, i.e., a policy statement having the force of law, without publishing a substantially similar proposed version in the IR. Although a rule becomes effective without publication in the IR, an agency must file an adopted and approved rule with the Indiana Legislative Council. These rule are then published in the IR.

VI. ORGANIZATION OF SITE

The Indiana Administrative Code (IAC) main web page has a list of IAC titles in title number order. Clicking on a title number will open a page with links to the articles within that title. The IAC will be updated as Final Rules become effective and will be archived each calendar year.

The Indiana Register (IR) main web page has links chronologically ordered with the most recently posted at the top of the page. The links are grouped as subcollections as follows:

DAILY COLLECTIONS:	Links for the current day and the previous six (6) days.
WEEKLY COLLECTIONS:	Links for the current week and the previous three (3) weeks.
MONTHLY COLLECTIONS:	Links for the current month and the previous eleven (11) months.

Each link has a counter indicating the number of documents in that subcollection. A zero (0) in the current day's counter indicates that no documents have been posted at the time of viewing.

Clicking on one (1) of the chronological links will open a Contents page with links to the various types of documents posted on the IR website.

The first link, All Documents, opens a page with links to all the documents, regardless of document type, that were posted during that particular time period. The documents are ordered by IAC title number and by LSA document number within each individual IAC title.

Each document type link, below the All Documents link, has a counter indicating the number of documents that particular subcollection contains. The links are grouped as follows:

ALL DOCUMENTS

All documents posted during that time period in title number order.

NOTICES:

- Recalls
- Withdrawals
- Rule Adoptions (Family and Social Services)
- Notices of Public Hearing
- Changes in Notices of Public Hearing
- Notices of Intent to Adopt a Rule (and Readoptions)
- IC 4-22-2-19 and IC 4-22-2-25 Notices
- Indiana Department of Environmental Management Notices
 - First Notices and Continuations
 - Second Notices and Continuations
 - Findings and Determinations
 - Notices of Readoption
 - Fiscal Impact
- Other Notices

RULES:

- Proposed Rules (and Readoptions)
- Economic Impact Statements
- Final Rules (and Readoptions)

Emergency Rules
Errata
Publisher's Receipts for Filed Documents

GOVERNOR'S ACTIONS:

Executive Orders (and Proclamations)
Requests for Additional Time
Disapprovals and Objections

ATTORNEY GENERAL'S ACTIONS:

Opinions
Disapprovals and Objections

NONRULE POLICY DOCUMENTS

Order of Document Listings

Within each chronological listing is a list of document types. Within each document type, documents are listed by IAC title number, and the documents of a specific title are listed in chronological order of posting with the most recently posted documents appearing at the top of the list. When two (2) or more documents are posted by the same agency on the same day, the documents are listed in LSA document number order. When two (2) or more documents with the same LSA Document number are posted on the same day, such as is the case with Proposed Rules, Economic Impact Statements, and Notices of Public Hearing, the documents are listed alphabetically by the suffix appearing in the document identification number (See Section IV).

Archives

The IR is archived back to Volume 24, October 1, 2000, and will now be archived at the end of each calendar year.

The IAC is archived back to the 2003 edition and will now be archived at the end of each calendar year.

VII. RELATED DOCUMENTS LINK

On all lists of documents, each document has, in addition to links to an HTML formatted version and a PDF formatted version, a Related Documents link. Clicking this Related Documents link gathers and displays the entire family of documents, of whatever types, associated with that particular LSA document number. Only documents posted after July 1, 2006, will be gathered through the Related Documents link. Documents published in the Indiana Register (IR) before July 2, 2006, will not appear in this list.

The list of related documents generated will be in reverse chronological order with the most recently posted documents appearing at the top of the list. Within the same posting date, the documents are listed in alphabetical order by the document type suffix located in the document identification number (DIN).

Typing an LSA document number in the LSA Document # search box on the [front page](#) of the IR website will also generate a list of Related Documents.

VIII. JUDICIAL NOTICE AND CITATION FORM

(See also Parts 7-3 through 7-7 of the Administrative Rules Drafting Manual.)

IC 4-22-9-3 provides for the judicial notice of rules published in the Indiana Register (IR) or the Indiana Administrative Code (IAC). Subject to any errata document that may affect a rule, the latest published version of a Final Rule is prima facie evidence of that rule's validity and content.

Cite to a current general and permanent rule by IAC citation in the following manner:

- (1) Cite the entire current contents of Title 312, for example, as Title 312 of the Indiana Administrative Code.
- (2) Cite the entire current contents of the third article in Title 312 as 312 IAC 3.
- (3) Cite the entire current contents of the fourth rule in Article 3 as 312 IAC 3-4.
- (4) Cite part or all of the current contents of the second section in Rule 4 as 312 IAC 3-4-2.

IC 4-22-9-6 provides that a citation in this form "shall be construed to include all amendments as of the date the reference is written, unless accompanied by a reference to a specific edition or supplement of the Indiana Administrative Code".

AFFIDAVITS OR CERTIFICATES OF AUTHENTICITY

Accompanying each archived edition of the IAC is a corresponding Affidavit of Authenticity (filed with the secretary of state under IC 4-22-8-8 (before its repeal)) or a Certificate of Authenticity certifying that the text is correct and complete. A Certificate of Authenticity is also posted for the Latest Update edition of the IAC.

At the bottom of each Affidavit or Certificate is a link to the previous edition's Affidavit or Certificate, as appropriate.

IX. POSTING SCHEDULE

Other than Publisher's Receipts for Filed Documents and Rule Activity Notices, documents are published on the Indiana Register (IR) website on Wednesdays at 3:00 p.m. If no documents have been submitted for publishing the only document that will be posted is a Rule Activity Notice.

Publisher's Receipts for Filed Documents

Publisher's Receipts for Filed Documents are posted within three (3) business days of the delivery of a Final Rule (FR) to the Publisher from the governor's office and are posted on an "as filed" basis daily at 5:00 p.m. (IC 4-22-2-39(c))

In addition, a Publisher's Receipt for Filed Document is posted when an Emergency Rule (ER), Agency Correction (AC), or Readopted Final Rule (RF) is filed with the Publisher.

NOTE: A user can find out if a FR has been filed with the Publisher by conducting a search with the LSA document number of the FR on the IR website. If the FR has been received by the Publisher, one (1) of the search results will be for a Publisher's Receipt (AF) document. The Publisher's Receipt will also appear on Related Documents lists.

Rule Activity Notices

Each day at 5:00 p.m., if no other document has been posted on the IR website that day, a Rule Activity Notice is generated and posted on the site in order to inform users that no documents have been or will be posted on that particular day.

Submitting Documents to the Register

Except for FRs, documents may be submitted for filing with the Publisher on any business day by email, or if preferred, documents may also be submitted in person between the hours of 8:30 a.m. and 4:00 p.m.

If documents are to be submitted in person, the Register staff should be contacted in advance to avoid scheduling conflicts.

For information regarding filing procedures for FRs, see Section XVII, Step 15.

The email address for all electronic submissions to the Indiana Register for publishing on the IR website is:

register@iga.in.gov

X. DOCUMENTS PUBLISHED IN THE INDIANA REGISTER

IC 4-22-2-19 AND IC 4-22-2-25 NOTICES CONCERNING DELAY IN RULEMAKING (60 DAY REQUIREMENT; ONE YEAR REQUIREMENT) (AR)

IC 4-22-2-19 (60 Day Requirement) [\(Example\)](#)

IC 4-22-2-25 (One Year Requirement) [\(Example\)](#)

IC 4-22-2-19 (60 Day Requirement) and IC 4-22-2-25 (One Year Requirement) require an agency to provide an electronic copy of the notice to the Publisher.

NOTICES OF INTENT TO ADOPT A RULE (NI) [\(Example\)](#)

(See also Part 4-1 of the Administrative Rules Drafting Manual.)

IC 4-22-2-23; IC 4-22-2-28.1

PROPOSED RULES (PR) [\(Example\)](#)

(See also Part 4-2 of the Administrative Rules Drafting Manual.)

IC 4-22-2-24

ECONOMIC IMPACT STATEMENTS (EI)

(Economic Impact Statement with requirements or costs) [\(Example\)](#)

(Economic Impact Statement with no requirements or costs) [\(Example\)](#)

(See also Financial Management Circular 5.2)

IC 4-22-2.1-5

NOTICES OF PUBLIC HEARING (PH)

(With a justification of requirements and costs) [\(Example\)](#)

(With no requirements or costs) [\(Example\)](#)

(See also Part 4-3 of the Administrative Rules Drafting Manual.)

IC 4-22-2-24

CHANGES IN NOTICES OF PUBLIC HEARING (CH) [\(Example\)](#)

(See also Part 4-5 of the Administrative Rules Drafting Manual.)

IC 4-22-2-24

NOTE: The types of documents referenced above are posted as individual documents. Within each Proposed Rule (PR), there are links to the respective Economic Impact Statement and Notice of Public Hearing for that PR. Clicking on these links retrieves the list of Related Documents. If there have been any Changes in Notices of Public Hearing, they will appear on the list as well.

DISAPPROVALS BY THE ATTORNEY GENERAL (DA) [\(Example\)](#)

IC 4-22-2-32; IC 4-22-2-38; IC 4-22-7-7

DISAPPROVALS BY THE GOVERNOR (DG) [\(Example\)](#)

IC 4-22-2-34; IC 4-22-2-38

EXTENSION OF TIME REQUEST BY GOVERNOR (AT) [\(Example\)](#)

IC 4-22-2-34; IC 4-22-7-7

PUBLISHER'S RECEIPTS FOR FILED DOCUMENTS (AF)

[\(Example\)](#)

IC 4-22-2-35; IC 4-22-2-37.1; IC 4-22-2-38

EMERGENCY RULES (ER)

[\(Example\)](#)

(See also Parts 3-5, 3-6, and 4-13 of the Administrative Rules Drafting Manual.)

IC 4-22-2-37.1

Click [HERE](#) to view or print, or both, a list of agencies with emergency rulemaking authority.

AGENCY CORRECTIONS (ERRATA) (AC)

[\(Example\)](#)

(See also Parts 4-7 and 6-16 of the Administrative Rules Drafting Manual.)

IC 4-22-2-38

NOTICES OF RECALL (RC)

[\(Example\)](#)

(See also Part 4-8 of the Administrative Rules Drafting Manual.)

IC 4-22-2-40

NOTICES OF WITHDRAWAL (WD)

[\(Example\)](#)

(See also Part 4-9 of the Administrative Rules Drafting Manual.)

IC 4-22-2-41

NOTICES OF INTENT TO READOPT A RULE (RN)

[\(Example\)](#)

IC 4-22-2-23; IC 4-22-2.5-3.1

PROPOSED READOPTIONS (RP)

[\(Example\)](#)

IC 4-22-2.5-4(b)

READOPTED FINAL RULES (RF)

[\(Example\)](#)

(See also Part 4-10 of the Administrative Rules Drafting Manual.)

IC 4-22-2.5-2; IC 4-22-2.5-4(b)

FINAL RULES (FR)

[\(Example\)](#)

(See also Part 4-6 of the Administrative Rules Drafting Manual.)

IC 4-22-2-35

EXECUTIVE ORDERS (EO)

[\(Example\)](#)

PROCLAMATIONS (GP)

[\(Example\)](#)

IC 1-1-3-2

ATTORNEY GENERAL'S OPINIONS (AO)

[\(Example\)](#)

OTHER NOTICES (ON)

[\(Example\)](#)

NONRULE POLICY DOCUMENTS (NR)

[\(Example\)](#)

(See also Part 4-14 of the Administrative Rules Drafting Manual.)

IC 4-22-7-7

NOTE: Nonrule Policy Documents (NR) are posted with the agency heading under which they are submitted, and the document identification number (DIN) will reflect that heading's [entity identifier](#). For example, the DIN for an NR submitted under Indiana Department of Environmental Management will show 318 for the entity identifier, even if the subheading is "Office of Water Quality". Therefore, if the agency wants the DIN's entity identifier to be 327, the heading of the NR should read "Water Pollution Control Division".

PUBLISHER'S CORRECTIONS (PC)

[\(Example\)](#)

(Generated by Publisher)

IC 4-22-8-4; IC 4-22-8-6

IDEM FIRST NOTICES (FN)

[\(Example\)](#)

IC 13-14-9-3

IDEM CONTINUATIONS OF FIRST NOTICES (FC)

[\(Example\)](#)

IC 13-14-9-3

IDEM SECOND NOTICES (SN)

[\(Example\)](#)

IC 13-14-9-4

IDEM CONTINUATIONS OF SECOND NOTICES (SC)

[\(Example\)](#)

IC 13-14-9-4

IDEM FISCAL IMPACT STATEMENTS (FI)

[\(Example\)](#)

IC 13-14-9-4.2

IDEM FINDINGS AND DETERMINATIONS (FD)

[\(Example\)](#)

IC 13-14-9-7; IC 13-14-9-8

IDEM NOTICES OF READOPTION (BN)

[\(Example\)](#)

IC 13-14-9.5-4

IDEM FINAL READOPTIONS (BF)

[\(Example\)](#)

IC 13-14-9.5

(See also SECTION 10 of the Administrative Rules Drafting Manual for IDEM rulemaking guidance and examples.)

RULE ACTIVITY NOTICES (ND)

[\(Example\)](#)

(See also Section IX)

XI. OTHER CITES RELEVANT TO THE RULEMAKING PROCESS

DELEGATION OF RULEMAKING ACTIONS

IC 4-22-2-15

PUBLIC ACCESS TO RULES AND PROPOSED RULES

IC 4-22-2-17

JOINT PROMULGATIONS

(See also Part 4-12 of the Administrative Rules Drafting Manual.)

IC 4-22-2-18

ELECTRONIC SUBMISSIONS TO PUBLISHER AND FORMAT OF DOCUMENTS

IC 4-22-2-20

INCORPORATIONS BY REFERENCE

(See also Part 8-7 of the Administrative Rules Drafting Manual.)

IC 4-22-2-21

ATTORNEY GENERAL AS LEGAL ADVISOR FOR AGENCIES

IC 4-22-2-22

AGENCY RULEMAKING DOCKET

IC 4-22-2-22.5

SOLICITATION OF COMMENTS

IC 4-22-2-23.1

PUBLIC HEARINGS

IC 4-22-2-26

CONSIDERATION OF COMMENTS RECEIVED AT PUBLIC HEARINGS

IC 4-22-2-27

REVIEW BY SMALL BUSINESS OMBUDSMAN

IC 4-22-2-28

ADOPTION OF RULESIC 4-22-2-29

SUBMISSION OF RULES TO ATTORNEY GENERAL FOR APPROVALIC 4-22-2-31

REVIEW OF RULE BY ATTORNEY GENERAL; APPROVAL OR DISAPPROVALIC 4-22-2-32

SUBMISSION OF RULES TO GOVERNOR FOR APPROVALIC 4-22-2-33

APPROVAL OR DISAPPROVAL OF RULE BY GOVERNORIC 4-22-2-34

SUBMISSION OF RULE TO PUBLISHER FOR FILINGIC 4-22-2-35

EFFECTIVE DATE OF RULES*(See also Part 6-9 of the Administrative Rules Drafting Manual.)*IC 4-22-2-36

EMERGENCY RULES; SUBMISSION TO PUBLISHER; ASSIGNMENT OF DOCUMENT CONTROL NUMBER; EFFECTIVE DATE; EXPIRATION; EXTENSIONIC 4-22-2-37.1

ACCEPTANCE OF RULE FOR FILING BY PUBLISHERIC 4-22-2-39

PROMULGATION PERIOD

In order to be effective, the final version of an adopted rule must be approved by the attorney general and the governor within one (1) year after the date that the Notice of Intent to Adopt a Rule is published. The Final Rule must then be filed with the Publisher.

IC 4-22-2-25

EXPIRATION AND READOPTION OF ADMINISTRATIVE RULES
IC 4-22-2.5

OFFICE OF MANAGEMENT AND BUDGET - REGULATORY MORATORIUM
Executive Order 13-03
Financial Management Circular 5.1

BUDGET APPROVAL
Executive Order 2-89
Financial Management Circular 5.2

RULEMAKINGS OUTSIDE OF IC 4-22-2

The Indiana Code (IC) provides that some agencies have the authority to adopt rules without going through the IC 4-22-2 rulemaking process. For example:

"IC 5-10.5-4-2 Powers

Sec. 2. (a) The board may do any of the following:

(1) Establish and amend rules and regulations:

(A) for the administration and regulation of the fund and the board's affairs; and

(B) to effectuate the powers and purposes of the board;
without adopting a rule under IC 4-22-2...".

These rulemakings are posted on the IR website only when the promulgating agency voluntarily submits a copy of the adopted rule to the Publisher.

XII. REGULATORY MORATORIUM PROCEDURES

Regulatory Moratorium Background

The regulatory moratorium was established by [Executive Order 13-03](#), and took effect on January 14, 2013. The moratorium applies to all executive branch agencies, and prohibits an agency from beginning a rulemaking unless an exception applies. [Financial Management Circular 5.1](#) (FMC 5.1) lists the exceptions to the moratorium, and the process for requesting authority to proceed with a rulemaking under one (1) of the exceptions. The Office of Management and Budget (OMB) determines whether an exception applies in consultation with the agency. Moratorium exception requests must be approved before beginning the formal rulemaking process. Requests for exemptions should be submitted to OMB via sbarules@sba.in.gov.

Helpful Resources

- OMB website:
 - <https://www.in.gov/omb/rule-approval-process/>
 - [Financial Management Circular 5.1](#)
 - [Financial Management Circular 5.2](#)
-

XIII. SMALL BUSINESS ECONOMIC IMPACT STATEMENT INFORMATION

Pursuant to IC 4-22-2.1-5, a small business Economic Impact Statement (EI) is necessary when a rule will impose costs or requirements on a small business. IC 5-28-2-6 defines "small business" as a business, with the majority of its employees in Indiana, that employed not more than one hundred fifty (150) employees on at least fifty percent (50%) of the working days of the business during the preceding calendar year. The small business EI requirement applies to all agencies, except the Indiana Department of Environmental Management and certain boards of the Department of Homeland Security. The agency must first determine whether the Proposed Rule (PR) will impose any cost or requirement on any small business, and if so, the agency must prepare a small business EI.

If a small business EI is not required, the agency should provide a statement to the Publisher that the rule does not impose any cost or requirement on any small business. It is helpful to include information explaining how the agency reached that conclusion in the statement. If there is any doubt about whether a cost or requirement would be imposed on a small business, the agency should prepare a small business EI.

The following five (5) items are required by IC 4-22-2.1-5(a) to be included in the small business EI:

- (1) An estimate of the number of small businesses, separated by industry sector, that will be subject to the PR.
- (2) An estimate of the average annual reporting, record keeping, and other administrative costs that small businesses will incur to comply with the PR.
- (3) An estimate of the total annual economic impact that compliance with the rule will have on all small businesses subject to the rule.
- (4) A statement justifying any cost or requirement that is imposed on a small business by the rule that is not expressly required by a statute or federal law. The statement must include a reference to any data, studies, or analyses the agency relied on in determining whether a cost or requirement will be imposed.
- (5) An analysis that considers any less intrusive or less costly alternative methods of achieving the purpose of the PR. The analysis must consider the following methods:
 - (A) The establishment of less stringent compliance or reporting requirements for small businesses.
 - (B) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.
 - (C) The consolidation or simplification of compliance or reporting requirements for small businesses.
 - (D) The establishment of performance standards for small businesses instead of design or operational standards imposed on other regulated entities by the rule.
 - (E) The exemption of small businesses from part or all of the requirements or costs imposed by the rule.

The small business EI must be published with the PR, and must be delivered with the PR to the small business ombudsman no later than the date of publication. At least seven (7) days before the public hearing, the small business ombudsman must review the PR and small business EI and submit written comments to the agency. The agency must make the comments from the small business ombudsman available on its website and for distribution at the public hearing. The agency must consider the comments from the small business ombudsman and respond in writing before adopting the rule. Note that IC 4-22-2.1-8 provides a cause of action to a small business that is adversely affected by a rule if the agency does not comply with the small business EI process.

A public hearing notice must include a statement that justifies any cost or requirement that is imposed on a regulated entity and is not expressly required by statute or federal law. IC 4-22-2-24(d). This statement is different than the small business EI because it addresses all regulated entities, not only small businesses.

The justification statement must include a reference to any data, studies, or analyses the agency relied on in determining whether an imposed cost or requirement is necessary.

XIV. ADMINISTRATIVE RULES DRAFTING MANUAL

The purpose of the [Administrative Rules Drafting Manual](#) is to provide a uniform and consistent format and style for rules published in the Indiana Register and the Indiana Administrative Code. The Administrative Rules Drafting Manual implements IC 4-22-2-42, which reads:

"Sec. 42. The publisher, with the assistance of the code revision commission, shall establish a format, a numbering system, standards, and techniques for agencies to use whenever they draft and prepare rules under this chapter.

As added by P.L.31-1985, SEC.31."

An agency shall submit a rule to the Publisher in the manner provided by IC 4-22-2-20:

"Sec. 20. (a) Whenever an agency submits a rule to the publisher, the attorney general, or the governor under this chapter, the agency shall submit the rule in the form of a written document that:

(1) is clear, concise, and easy to interpret and to apply; and

(2) uses the format, numbering system, standards, and techniques established under section 42 of this chapter.

(b) After June 30, 2006, all documents submitted to the publisher under this chapter must be submitted electronically in the format specified by the publisher.

As added by P.L.31-1985, SEC.9. Amended by P.L.215-2005, SEC.2; P.L.123-2006, SEC.3; P.L.291-2013, SEC. 5; P.L.53-2014, SEC 57."

A revised Administrative Rules Drafting Manual was approved by the Legislative Council on May 24, 2022, and is available at:

<http://iac.iga.in.gov/iac/IACDrftMan.pdf>

XV. STEPS FOR ADOPTION OF ADMINISTRATIVE RULES

These steps are intended as a general guideline only and should not be considered a definitive explanation of the rulemaking process. Consult IC 4-22 and statutes concerning rulemaking authority for a particular agency before beginning the rulemaking process, as the rulemaking process may vary between some agencies, for example Indiana Department of Environmental Management should reference IC 13-14-9. The attorney general is the legal advisor to all agencies in the drafting and preparation of rules. (IC 4-22-2-22)

The Legislative Services Agency (LSA) is the official publisher (Publisher) of the Indiana Register (IR) and Indiana Administrative Code (IAC). Documents should be submitted to the Publisher via email at register@iga.in.gov, in Word or WordPerfect format only, with exception of the Final Rule in Step 15.

Additional details and examples may be found in this guide and the Administrative Rules Drafting Manual.

SEE ALSO:

Executive Order #13-03:

Moratorium on Regulations

Attorney General Review of Administrative Rules:

Memorandum - Revised August 30, 2016

FMC 5.1:

OMB Review of Agency Rulemaking - January 1, 2022

FMC 5.2:

SBA Review of Agency Rulemaking - January 1, 2022

Executive Order #2-89

STEP 1: Submit documents for OMB approval under Executive Order #13-03.

Agency head shall submit a request in writing addressed to the Office of Management and Budget (OMB) via email, sent to sbarules@gov.in.gov which includes copies of the information required by Fiscal Management Circular 5.1 (FMC 5.1) prior to submitting a Notice of Intent to Adopt a Rule (NI) to the Publisher. See Financial Management Circular 5.1 (FMC 5.1) and Executive Order #13-03 for more details.

STEP 2: Start maintaining a rulemaking docket for each action.

Maintain an indexed rulemaking docket containing each pending rulemaking action on the agency's website. The rulemaking docket must be updated promptly and kept current throughout the rulemaking process. A copy of the rulemaking docket must be included as supporting documentation when submitting the Final Rule (FR) packet to the attorney general. See IC 4-22-2-22.5 for rulemaking docket requirements.

STEP 3: Submit Notice of Intent to Adopt a Rule to Publisher.

Submit the Notice of Intent to Adopt a Rule (NI), which must include the statutory authority for the rulemaking, an overview of the intent and scope of the rulemaking, the name, address, telephone number, and email address for the small business regulatory coordinator and small business ombudsman required under IC 4-22-2-28.1, electronically (Word or WordPerfect format) to the Publisher at register@iga.in.gov. The NI must be published at least twenty-eight (28) days before publication of the Proposed Rule (PR). The Publisher will assign the document an LSA document number upon receipt.

NOTE: For a rulemaking required by new legislation, the NI must be published not later than sixty (60) days after the effective date of the statute authorizing the rule. (IC 4-22-2-19; IC 4-22-2-23)

STEP 4: Submit NI to the Budget Agency.

When an agency submits its NI to the Publisher, the agency shall simultaneously provide the Budget Agency (sbarules@gov.in.gov) with a copy of the NI and additional required documents. See [FMC 5.2](#) and [Executive Order #2-89](#) for complete details of documents to submit to Budget Agency.

STEP 5: Obtain approval from the Budget Agency under Executive Order #2-89 before submission of the PR for publication. See [Executive Order #2-89](#) and [FMC 5.2](#) for more information.

STEP 6: Determine the estimated economic impact that compliance with the PR will have on all regulated entities.

If the estimated economic impact is more than five hundred thousand dollars (\$500,000), electronically submit the PR, not later than fifty (50) days before the public hearing, with all supporting data or information, to the Budget Agency (sbarules@gov.in.gov) and to the Legislative Council (legislative.council@iga.in.gov). (IC 4-3-22-13; IC 4-22-2-28; IC 4-22-2.1-5)

NOTE: The agency shall deliver the Economic Impact Statement (EI) along with the proposed rule to small ombudsman not later than the date of publication. (IC 4-22-2.1-5(c))

STEP 7: Submit PR and EI to Publisher.

(1) Electronically submit the PR, with the corresponding small business EI (if applicable, see IC 4-22-2.1-5) in separate attachments, to the Publisher to obtain an intended date of publication. Submit each PR individually, and do not send the Notice of Public Hearing (PH) until an intended date of publication is received, so that statutory timelines may be met. The PR should substantively match the information submitted to the Budget Agency in the agency's request for an exception to the rules moratorium.

(2) Upon receipt of the PR, the Publisher will provide an intended date of publication to the agency to be referenced in setting a date for the public hearing.

NOTE: The agency must deliver an electronic copy of the EI or Fiscal Impact Statement (FI) with any supporting data, studies, or analyses to the Legislative Council as soon as practicable under IC 4-22-2-28.1.

STEP 8: After receiving intended date of publication, submit PH to the Publisher.

When the intended date of publication is received, electronically submit the PH to the Publisher based on this intended date of publication. The public hearing date must be at least twenty-one (21) days after the date of publication of the PR on the IR website and publication in the newspaper. Submit the PH, including all information required under IC 4-22-2-24(d), and one (1) electronic or paper copy of the matters incorporated by reference, as applicable, under IC 4-22-2-21 to the Publisher.

STEP 9: Receive Authorization to Proceed, then contract with Marion County newspaper to publish hearing notice.

(1) The Publisher will send an electronic Authorization to Proceed after receiving the PH.

(2) Upon receiving the Authorization to Proceed, contract with and publish a hearing notice in a Marion County newspaper. The public hearing must be at least twenty-one (21) days after the date of publication of the PR on the IR website and publication in the newspaper.

(3) Make at least one (1) copy of the PR, including the full text of any matters incorporated by reference, available for public inspection and copying. (IC 4-22-2-20; IC 4-22-2-21; IC 4-22-2-24; IC 4-22-2.1-5)

STEP 10: Make written comments from small business ombudsman available.

If applicable, IC 4-22-2.1-6 requires that the small business ombudsman submit written comments on the PR and the EI to the agency not later than seven (7) days before the date of the public hearing.

Upon receipt of the small business ombudsman's comments, the agency shall make the comments available:

- (1) for public inspection and copying at the offices of the agency under IC 5-14-3;
- (2) electronically through the electronic gateway administered under IC 4-13.1-2-2 by the office of technology; and
- (3) for distribution at the public hearing required by IC 4-22-2-26.

STEP 11: Determine whether the PR can be adopted and approved, or deemed approved, by the governor not later than one (1) year after publication of the NI. (IC 4-22-2-25)

If the PR cannot be adopted and approved, or deemed approved, by the governor within one (1) year after publication of the NI, before the 250th day after publication of the NI, send notification to the Publisher in accordance with IC 4-22-2-25.

STEP 12: Hold public hearing under IC 4-22-2-26.

STEP 13: Respond to small business ombudsman.

When applicable, under IC 4-22-2-28(b), an agency must respond in writing to the small business ombudsman's comments before finally adopting a rule under IC 4-22-2-29.

STEP 14: Adopt the rule, including any revisions under IC 4-22-2-27 through IC 4-22-2-29.

STEP 15: Submit Final Rule binder to attorney general's office for approval.

Prepare and submit the following in one (1) solid colored folder or binder to the attorney general for approval:

- (1) The FR on a CD-ROM clearly labeled with the agency name and LSA document number and placed in a 3 hole punched plastic sleeve with a signature page ([see sample signature page](#)), followed by a divider.
- (2) One (1) copy of clearly labeled supporting documentation, followed by a divider. Supporting documentation includes the following:
 - (A) Newspaper proof of publication (Publisher's affidavit).
 - (B) A transcript or summary of the public hearing.
 - (C) A copy of the Authorization to Proceed from the Publisher.
 - (D) Written comments received during the rulemaking process.
 - (E) Other miscellaneous matters made a part of the rule package, if applicable, including:
 - (i) a moratorium exception letter;
 - (ii) transmittal emails to Legislative Council;
 - (iii) a list of all text changes made after publication of the PR in the IR;
 - (iv) a list of all matters incorporated by reference that have been previously filed with the Publisher, including a citation to the document with which the matter was filed and indicating the date and time the matter was filed; and
 - (v) a copy of the rulemaking docket.
- (3) One (1) copy of any matters incorporated by reference, if applicable, including a brief description of the incorporated matters, followed by a divider.
- (4) Executive summary (required by governor but may be submitted at this time), followed by a divider.
- (5) OMB approval letter (see STEP 1).

The attorney general may request submission of additional documents. (IC 4-22-2-31; IC 4-22-2-33; IC 4-22-2-35) ([See Attorney General Review of Administrative Rules](#))

STEP 16: Approval of Final Rule by governor.

Upon the attorney general's approval, the attorney general will forward the rule, as a courtesy, to the governor for approval. If after forty-five (45) days the attorney general has not approved or

disapproved the rule, the rule is deemed to be approved and may be submitted to the governor for approval. (IC 4-22-2-31; IC 4-22-2-32)

STEP 17: Final Rule filed with Publisher.

If the governor approves the rule, the governor, as a courtesy, will forward the rule to the Publisher. If after fifteen (15) days the governor has not approved or disapproved the rule, the governor may request an additional fifteen (15) days to approve or disapprove the rule. If the governor neither approves nor disapproves the rule, the rule is deemed approved and may be submitted to the Publisher. (IC 4-22-2-33; IC 4-22-2-34)

Upon acceptance for filing by the Publisher, a Publisher's Receipt for Documents Filed will be posted on the IR website. This posting begins the thirty (30) day period until the rule becomes effective.

NOTE: The Publisher has up to three (3) days to accept a FR for filing under IC 4-22-2-39. See Review of the Administrative Rules Drafting Manual for additional information.

STEP 18: The Final Rule will be posted on the IR website before the rule becomes effective. The rule will also be updated in the IAC at this time. (IC 4-22-2-35; IC 4-22-2-39; IC 4-22-7-5)

Indiana Register Publishing Assistance:
Legislative Services Agency
Indiana Government Center North
100 North Senate Avenue, Room N201
(317) 232-9557 or (317) 232-9564
register@iga.in.gov

Legal and Drafting Assistance:
Advisory Division
Office of the Attorney General
Indiana Government Center South
302 West Washington Street, Fifth Floor
(317) 232-6201

Other Procedures

Readoptions:

(1) Generally, to readopt a rule, submit a Notice of Intent to Readopt (RN) via email to the Publisher. The RN contains information similar to that of NI, but pertaining to the rules being readopted. An example may be found in the Administrative Rules Drafting Manual. The agency must also conduct a review of the rule to consider whether any alternate methods would be less costly or intrusive and of the most recent economic impact statement. See IC 4-22-2.5-3.1 for further detail. The readoption process for IDEM is detailed in IC 13-14-9.5.

(2) After the RN has been posted, the agency must wait thirty (30) days for any written request to separate any portion of the document from the rulemaking, and should wait an extra five (5) days to allow for receipt of any letters postmarked within the thirty (30) period. If no requests are received, the Readopted Final Rule (RF) shall be submitted in Word or WordPerfect format to the Publisher along with the signature page, signed by the authorizing person. Submission of the Readopted Final Rule and a PDF copy of the signature page may be emailed the Publisher (See IC 4-22-2.5).

NOTE: The regulatory moratorium does not apply to readoptions.

Emergency Rules:

Emergency Rules (ER) do not follow the same approval process as other rules. The ER document must be submitted to the Publisher electronically (Word or WordPerfect format) along with a signed copy of a signature page (PDF format). The only signature needed for an ER is the authorizing person with a line for the filing date and time. (See IC 4-22-2-37.1).

Notice of Recall:

A recall is only necessary when the agency needs to make changes after the agency has adopted the rule. A recall “unadopts” a rule taking it back to where it was in the promulgation process immediately before adoption. After a recall, the rule may be readopted in an identical or revised form. Attorney General or Governor approval, if either has taken place, are voided by a recall, and

are required to be obtained after a readoption. To recall a rule document, an agency must email the LSA document number to the Publisher and request that the document be recalled. The Notice of Recall will then be generated by the Publisher. (See IC 4-22-2-40.) If the recalled rule is corrected and is adopted by the agency for a second time, a new LSA document number will not be required. The Final Rule binder may proceed to the attorney general's office for approval.

Notice of Withdrawal:

A withdrawal needs to be filed if a rule has been adopted however a major error has been made and the rulemaking process must be halted. To withdraw a rule document, an agency must email the LSA document number to the Publisher and request that the document be withdrawn. The Notice of Withdrawal will then be generated by the Publisher. This will stop the rulemaking process. If an agency decides to amend or add a rule after the withdraw had been published, the rulemaking process will need to start over with all appropriate approvals and a new LSA document number. (See IC 4-22-2-41.)

Change of Public Hearing:

If a change of public hearing is needed, submit a Change in Notice of Public Hearing (CH) to the Publisher for publication. The new date, time, or location of the public hearing must be shown in boldface text. The Publisher will send a intended date of publication. Remember that the new hearing information must also be published in a newspaper of general circulation in Marion County. Both postings of the new public hearing information must be completed at least twenty-one (21) days before the public hearing is held.

Agency Correction:

To correct the text of the IAC, a FR, an ER, or a RF, the agency must submit an Agency Correction (AC) for filing to the Publisher. The AC must be submitted to the Publisher electronically (Word or WordPerfect format) along with a signed copy of a signature page (PDF format) and copy of any materials incorporated by reference. The only signature needed for an AC is the authorizing person with a line for the filing date and time. The AC will be effective 45 days after filing with the Publisher (See IC 4-22-2-38).

XVI. PROCEDURES FOR SUBMITTING DOCUMENTS FOR PUBLICATION IN THE INDIANA REGISTER

Notices of Intent to Adopt a Rule

A Notice of Intent to Adopt a Rule (NI) may be submitted to the Publisher electronically (in Word or WordPerfect) as an email attachment to register@iga.in.gov. An LSA document number will be assigned by the Publisher once the document is processed.

The NI must include the following:

- (1) An overview of the intent and scope of the rulemaking.
- (2) The statutory authority for the rulemaking.
- (3) The:

- (A) name;
- (B) address;
- (C) telephone number; and
- (D) email address;

of the agency's designated small business regulatory coordinator under IC 4-22-2-28.1.

- (4) The:

- (A) name;
- (B) address;
- (C) telephone number; and
- (D) email address;

of the small business ombudsman designated under IC 5-28-17-6.

- (4) A statement of the resources available to regulated entities through the small business ombudsman designated under IC 5-28-17-6. (See IC 4-22-2-28.1(e).)

The solicitation of questions or comments is discretionary under IC 4-22-2-23.

Typically, an NI will be posted Wednesday of the following week after receipt of the document. An agency must wait at least twenty-eight (28) days after the NI has been posted before submitting the Proposed Rule (PR) to the Publisher. NOTE: The agency must have received approval from the Budget Agency before submitting the PR for publication. (See Executive Order 2-89.)

Proposed Rules and Notices of Public Hearing

June 9, 2006, was the cut-off date for the July 1, 2006, Indiana Register (IR), which was the last monthly publication of the IR. Since July 1, 2006, rules have been posted on the IR website on Wednesdays at 3:00 p.m. The first weekly posting was on July 5, 2006. Therefore, it is imperative that PRs now be submitted for publication to the Publisher as follows:

- (1) An agency may submit the PR with its corresponding Economic Impact Statement (EI) (IC 4-22-2.1-5) as a separate attachment (but not the Notice of Public Hearing (PH)) electronically to register@iga.in.gov. All PRs must be sent individually. The Publisher will not accept emails with multiple attachments, except for a PR with its corresponding EI. Two (2) or more PRs may not be sent as attachments to the same email. The LSA document number must be included either in the file name of the attachments or as part of the text of the documents themselves. NOTE: The prohibition of multiple email attachments applies only to PRs (and IC 13-14-9 Indiana Department of Environmental Management (IDEM) notices that are posted with PHs).
- (2) Upon receipt of the PR and its corresponding EI, the Publisher will review the rule and reply with an intended date of publication (*see [next page](#) for an example*). This date will be a Wednesday and is contingent on the Publisher's receiving the PH information by the preceding Friday.
- (3) When the agency receives, via email, the intended publication date, the agency may then schedule the public hearing based on this date. The public hearing must be at least twenty-one (21) days after the date of publication of the PR.

EXAMPLE OF AN INTENDED DATE OF PUBLICATION EMAIL:

The intended date of posting for LSA Document #XX-XX is *[Wednesday posting date]*. This date is contingent on our receiving your Notice of Public Hearing by *[the Friday before the intended date]*.

If the Notice is not received by *[the Friday before the intended date]*, a new intended date of posting will be sent to your agency.

(4) The agency must then send only the PH (not the PR or EI again) to register@iga.in.gov. The PH must include the date, time, location, justification of requirements or costs under IC 4-22-2-24(d)(3) (except for IDEM boards), reference to the subject matter, and a declaration that a copy of the PR and any data, studies, or analyses referenced in a justification of requirements or costs on regulated entities, if any, is on file and may be examined and copied in the office of the agency proposing the rule. As referenced in subdivision (1), PHs must be sent individually. The PH must reference the LSA document number, either as part of the file name or as part of the text document. NOTE: If the PH information is not received by the Friday before the following Wednesday's postings, the PR will not be posted on the contingent intended publication date. In these cases, a new date will be sent to the agency, which must then schedule a public hearing and send the information to the Publisher within the time frame referenced in subdivision (2).

(5) Upon receipt of the PH, the Publisher will reply to the email with an Authorization to Proceed (*see below for an example*) with the public hearing. Upon receipt of the Authorization to Proceed, the agency may contract with a newspaper of general circulation in Marion County to publish the PH in the newspaper. In addition, the Authorization to Proceed must be included in the Final Rule (FR) packet that is submitted to the attorney general's office for approval.

If you have any questions about the above procedure, contact register@iga.in.gov.

EXAMPLE OF AN AUTHORIZATION TO PROCEED:

AUTHORIZATION TO PROCEED

This document is the authorization to proceed as required under IC 4-22-2-24(g).

The intended date for publication of LSA Document #XX-XXX is *[intended date]*. Please include this authorization to proceed with the documents submitted to the Attorney General under IC 4-22-2-31.

Changes in Notices of Public Hearing

Because the procedure for submitting a Change in Notice of Public Hearing (CH) is different than submitting a PH, which, under IC 4-22-2-24, requires an Authorization to Proceed, a procedure has been implemented to ensure that the Publisher does not receive a CH with a date that does not allow enough time for the Publisher to process and post the document.

Therefore, when an agency wishes to post a CH, an agency must contact the Publisher at register@iga.in.gov to find out when a CH can be posted on the IR website.

Only the changed public hearing notice will be posted on the IR website. The new date, time, or location of the public hearing must be shown in boldface text.

Readoptions

[NOTE: See also IC 4-22-2.5-3.1 for readoptions imposing requirements or costs on small businesses.]

- (1) An agency may submit a Notice of Intent to Readopt to the Indiana Register office electronically (in Word or WordPerfect format) as an email attachment to register@iga.in.gov. The majority of the document is standard language, and the agency shall add the appropriate information, such as citations, headings, names, etc. NOTE: The headings should match the level of the cite being readopted, i.e., all capital letters for articles, initial capital letters for rules, and the first word only capitalized for sections. ([Example](#))
- (2) The agency must also conduct a review of the rule to consider whether any alternate methods would be less costly or intrusive and of the most recent economic impact statement. See IC 4-22-2.5-3.1 for further detail. The readoption process for IDEM is detailed in IC 13-14-9.5.
- (3) Once the Notice of Intent to Readopt has posted on the IR website (the agency contact person will receive a notification by email after the posting), the agency must wait thirty (30) days for requests to separate a portion of the document out (see IC 4-22-2.5-4(b)) plus five (5) extra days for letters postmarked within the thirty (30) day period that are received after the thirty (30) day waiting period has elapsed.
- (4) If no requests are received, the agency may proceed with creating a Readopted Final Rule. Again, the document is predominantly standard language. ([Example](#))
- (5) The authorizing person for the agency shall sign a paper signature page, and the agency contact person shall email a PDF of the signature page, along with the Readopted Final Rule in Word format, to register@iga.in.gov. (NOTE: the Readopted Final Rule must be adopted by the individual or group of individuals with the statutory authority to adopt rules for the agency.) The Publisher will affix a time-stamped label to the signature page indicating that the document has been filed and then email a PDF of the signature page with the intended date of publication to the agency.

A Readopted Final Rule must be filed with the Publisher before December 2 in order to be effective by the succeeding January 1. (See IC 4-22-2.5-5 concerning the power of the Governor to postpone the expiration of an administrative rule.)

IDEM Comment Period Deadlines

When IDEM (IC 13-14) documents are submitted to the Publisher for posting on the IR database website, the rulewriter must insert "[publication date plus xx days]" in the place where the comment period deadline date appears (when applicable). When the IR staff reviews the document, the Publisher will determine when the document can be posted, calculate the comment period deadline, and send the date to the rulewriter for confirmation. The rulewriter must reply to the Publisher confirming the date. NOTE: This is a separate procedure from the intended date of publication involved in the PH procedure.

Notices of Recall and Notices of Withdrawal

When an agency finds it necessary to recall or withdraw an LSA document, the agency may send an email with the LSA document number and a request to recall or withdraw the document to the Publisher at register@iga.in.gov. It is not necessary for the agency to send an actual Notice of Recall or Notice of Withdrawal document since these notices are generated by the Publisher.

NOTE TO AGENCIES - REGISTER SUBMISSIONS VIA EMAIL:

All electronic submissions to the Indiana Register for publishing on the IR website should be sent to:

register@iga.in.gov

This is a shared mailbox that each Register staff member can access.

XVII. STATE AGENCIES

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† = Agency's rules are expired, repealed, transferred, or otherwise voided.

Listing of State Agencies by Title Number

GENERAL GOVERNMENT

10	Office of Attorney General for the State
11	Consumer Protection Division of the Office of the Attorney General
† 15	State Election Board
† 16	Office of the Lieutenant Governor
17	Office of Community and Rural Affairs
† 18	Indiana Election Commission
20	State Board of Accounts
25	Indiana Department of Administration
28	Office of Technology
† 30	State Personnel Board
31	State Personnel Department
† 33	State Employees' Appeals Commission
35	Board of Trustees of the Indiana Public Retirement System
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† = Agency's rules are expired, repealed, transferred, or otherwise voided.

XVIII. DOCUMENT FORMATS

Indiana Register (IR) documents have links to both a PDF version and an HTML version. The Latest Update edition of the Indiana Administrative Code (IAC) has links to a PDF version and a WordPerfect version. The PDF version of both the IR and the IAC has been designated the official version. For IR documents, the PDF document and its internal pagination should be used for citation purposes. For IAC sections, see [Section VIII](#).

Downloading the IAC in Microsoft Word Format

Each article in the Latest Update edition of the IAC has links to the PDF version and the WordPerfect version of that article. Instructions on how to download an IAC article in Microsoft Word format are as follows:

- (1) Go to the Latest Update edition of the IAC at:

http://iac.iga.in.gov/iac/iac_title

- (NOTE: It might be helpful to print out these instructions before clicking the link above.)
- (2) Click on the IAC title link that contains the article. A list of articles in that title will appear on your screen.
 - (3) Right click on the WordPerfect link to the article you wish to download.
 - (4) Select "Save Target As".
 - (5) A "Save As" dialog box will appear with the existing file name highlighted.
 - (6) Navigate to the folder to which you wish to save the file.
 - (7) Rename the file as you choose, adding '.doc' as the extension for the file name.
 - (8) Click "Save" to download the file in whichever folder you have chosen.
 - (9) If a "Download Complete" dialog box appears, click "Open". The saved article will open in Microsoft Word.
 - (10) If a "Download Complete" dialog box does not appear, go to the folder in which the document was saved and open the document from that folder.

Disclaimer: The WordPerfect version of the IAC is not the official version, and older text, particularly equations, tables, artwork, and special characters, should be checked for accuracy against the PDF version of the IAC when converting from WordPerfect to Microsoft Word or other formats.

Hyperlinks

CITATIONS IN THE TEXT OF INDIANA REGISTER DOCUMENTS:

Indiana Code (IC) cites are hyperlinked in the text of IR documents. The hyperlink will direct a user to the text of the referenced IC cite on the General Assembly's website. NOTE: If an agency uses the section symbol, §, or spells out Indiana Code instead of using the abbreviation IC (without periods), the cite will not be hyperlinked.

IAC cites appearing in IR documents are hyperlinked to the IR website's Latest Update to the IAC.

Document identification numbers (DINs) appearing in IR documents are hyperlinked. The hyperlink will direct a user to the text of the referenced IR document.

NOTE: Hyperlinks that are generated dynamically by external software, such as Adobe Acrobat and Adobe Reader, on the user's computer when documents are viewed, are not verified or maintained by the Publisher. Typically, these links are not underlined.

ADDITIONAL HYPERLINKS IN PROPOSED RULES:

When applicable, a link to the Economic Impact Statement for a Proposed Rule (PR) appears immediately following that rule's DIGEST.

A link to the Notice of Public Hearing for the PR appears at the end of each PR.

XIX. SEARCHING THE INDIANA REGISTER WEBSITE

Once a document has been posted on the Indiana Register (IR) website, it must be indexed by the General Assembly search engine before becoming searchable. Newly posted documents, therefore, will not appear in search results immediately after posting.

Search Methods

WILDCARD SEARCHES

Standard query parser supports single and multiple character wildcard searches within single terms. Wildcard characters can be applied to single terms, but not to search phrases.

Single character (matches a single character): Use ?

The search string

te?t	would match	test and text
------	-------------	---------------

Multiple characters (matches zero or more sequential characters): Use *

The wildcard search:

hand*	would match	hand, handling, handwritten
-------	-------------	----------------------------------

You can also use wildcard characters in the middle of a term. For example:

te*t	would match	test, text, testament ...
------	-------------	---------------------------

*est	would match	west, request, digest
------	-------------	----------------------------

SEARCHING WITH QUOTATION MARKS

Enclose phrases in quotation marks to find the entire phrase instead of the individual words in the phrase. For instance, "police officer" will find only the term "police officer". It will not find individual instances of "police" or "officer".

IR WEBSITE SEARCH AND RETRIEVAL BOXES

Along the left side of IR website pages is a group of search and retrieval boxes where one may search for specific terms in the Indiana Administrative Code (IAC) or the IR, retrieve documents by document identification number (DIN) or LSA document number, or retrieve IAC and Indiana Code (IC) cites.

(See the following page for an explanation of the search and retrieval boxes.)

Indiana General Assembly Administrative Rules Drafting Manual Emergency Authority List
Indiana Register Current IR Archive
Indiana Administrative Code Latest Update Archive
IR and IAC Search Enter search terms <input type="text"/> <input type="checkbox"/> All Registers <input type="checkbox"/> Latest Update IAC <input type="button" value="Search"/> Advanced Search
Register DIN (Document ID Number) <input type="text"/> <input type="button" value="Go"/> Enter the full DIN, example: 20060301-IR-025050010NIA
LSA Document # (Documents since July 2, 2006) <input type="text"/> - <input type="text"/> <input type="button" value="Go"/> Example: 06 - 121
IAC Cite <input type="text"/> - IAC - <input type="text"/> <input type="button" value="Go"/> Enter Title and Article (optional) example: 45 - IAC - 1
Indiana Code Cite <input type="text"/> - <input type="text"/> - <input type="text"/> - <input type="text"/> <input type="button" value="Go"/> Enter Title, Article*, Chapter*, and Section* * = optional example: 4 - 22 - 8 - 2

← Directs the user to the Law & Administrative Rules page of the General Assembly website.

← Link to the Administrative Rules Drafting Manual.

← Link to the Emergency Authority List.

← The Current IR link directs the user to a listing of Register documents posted within the last twelve (12) months, organized chronologically. The Archive link directs the user to the Register archive page.

← The Latest Update link directs the user to a list of titles in the Latest Update edition of the IAC. The Archive link directs the user to the IAC archives page.

← Entering a term in the IR and IAC Search box generates a list of documents containing the term. The default search scope is all Registers and all editions of the IAC posted on the site. Checkmarking either the All Registers box or the Latest Update IAC box will limit the search to whichever box is checked. If the Search button is pressed without any information in the above boxes (or by clicking the Advanced Search link), the user will be directed to the Advanced Search page.

← Entering (or pasting) a DIN into the Register DIN box retrieves the identified document. The Go button initiates the retrieval.

← Entering an LSA document number in these boxes generates a list of documents associated with that LSA document number (Related Documents). This includes only those documents posted since July 2, 2006.

← Entering an IAC title number and article number retrieves that IAC article. Entering an IAC title number retrieves a listing of article headings in that title.

← Entering a complete Indiana Code citation retrieves the IC chapter. (Entering an IC title, article, and chapter also retrieves the chapter.) Entering an IC title and article retrieves a listing of chapters in that article. Entering an IC title retrieves a listing of articles in that title.

Advanced Search Page

In addition to the search and retrieval functions, on each IR website page is a group of search boxes that appears at the top of hit lists from searches or that is accessible by clicking the Advanced Search link in the IR and IAC Search box.

At the top of this Advanced Search page is the following brief explanation of the timetable and contents of the archives and method of using the search functions on the page:

When are documents archived? IAC: Annually IR: Annually	How far back does the archive go? IAC: 2003 Edition IR: October 2000, Volume 24	How do I search the archive? (1) Checkmark the "IAC Editions". (2) Checkmark the "IR Volumes".
--	--	---

Next is a search box where a user can search for specific words or terms within the IR and the IAC. The default search for this search box is the Latest Update edition only of the IAC and all IR publications, both current and archived.

Search for

The next group of boxes enables a user to search within one (1) or any combination of current and archived IAC editions by placing a checkmark in the desired edition or editions.

Search within IAC Editions (one or more)	<input checked="" type="checkbox"/> Latest Update	<input type="checkbox"/> All Editions		
	<input type="checkbox"/> 2016 Edition	<input type="checkbox"/> 2015 Edition	<input type="checkbox"/> 2014 Edition	<input type="checkbox"/> 2013 Edition
	<input type="checkbox"/> 2012 Edition	<input type="checkbox"/> 2011 Edition	<input type="checkbox"/> 2010 Edition	<input type="checkbox"/> 2009 Edition
	<input type="checkbox"/> 2008 Edition	<input type="checkbox"/> 2007 Edition	<input type="checkbox"/> 2006 Edition	<input type="checkbox"/> 2005 Edition
	<input type="checkbox"/> 2004 Edition	<input type="checkbox"/> 2003 Edition		

The next group of boxes enables a user to search within one (1) or any combination of current and archived IR publications by placing a checkmark in the desired volume or volumes. The Current IR box enables the user to search within all IR documents posted in the current and previous eleven (11) calendar months. The Recent IR box narrows the search down to IR documents posted in the last eighty-four (84) calendar days.

Search within IR Volumes (one or more)	<input checked="" type="checkbox"/> All Volumes (to Current)	<input type="checkbox"/> Current IR (since Jul 1, 2015)	<input type="checkbox"/> Recent IR (since Apr 5, 2016)	
	<input type="checkbox"/> Jan-Dec 2015 (Jan 2015 - Dec 2015)	<input type="checkbox"/> Jan-Dec 2014 (Jan 2014 - Dec 2014)	<input type="checkbox"/> Jan-Dec 2013 (Jan 2013 - Dec 2013)	<input type="checkbox"/> Jan-Dec 2012 (Jan 2012 - Dec 2012)
	<input type="checkbox"/> Jan-Dec 2011 (Jan 2011 - Dec 2011)	<input type="checkbox"/> Jan-Dec 2010 (Jan 2010 - Dec 2010)	<input type="checkbox"/> Jan-Dec 2009 (Jan 2009 - Dec 2009)	<input type="checkbox"/> Jan-Dec 2008 (Jan 2008 - Dec 2008)
	<input type="checkbox"/> Jan-Dec 2007 (Jan 2007 - Dec 2007)	<input type="checkbox"/> Jul-Dec 2006 (Jul 2, 2006 - Dec 2006)	<input type="checkbox"/> Volume 29 (Oct 2005 - Jul 1, 2006)	<input type="checkbox"/> Volume 28 (Oct 2004 - Sep 2005)
	<input type="checkbox"/> Volume 27 (Oct 2003 - Sep 2004)	<input type="checkbox"/> Volume 26 (Oct 2002 - Sep 2003)	<input type="checkbox"/> Volume 25 (Oct 2001 - Sep 2002)	<input type="checkbox"/> Volume 24 (Oct 2000 - Sep 2001)

The Advanced Search boxes allows a user to search within the documents associated with a specific LSA document number or by IAC title number in IR documents posted since July 2, 2006.

Advanced Search (Documents since July 2, 2006):	LSA Doc Number:	<input type="text"/> - <input type="text"/>	Title:	<input type="text"/>
---	-----------------	---	--------	----------------------

When using the Advanced Search boxes above, the following alerts appear with the list of hits to remind the user that they are searching only in documents posted since July 2, 2006. These alerts also appear if a user types in an incorrect IAC title number or LSA document number, or an IAC title number that has not appeared in the IR since July 2, 2006:

Alert: Title option functions only for Register documents posted since July 2, 2006.

Alert: LSA Document Number option functions only for Register documents posted since July 2, 2006.

If a user enters an incorrectly formatted LSA document number, the following alert appears:

Alert: LSA Document Number option requires both a year and a document number. This option functions only for Register documents posted since July 2, 2006.

At the bottom of the screen is information regarding the number of matches and the time required to complete the search.

Number of matches: 0 Search completed in 0.000379 seconds.

Search Terms for Each Type of Document

If a user needs to find the total number of a specific type of document that has been published in a given year, they can use the Advanced Search option described in this section by typing the search term for the document type, with the term in quotations, deselecting the check box next to Latest Update and All Volumes, and then selecting the check box next to the year to be searched (e.g. Jan-Dec. 2015). While search terms must be written using quotation marks, they are not case-sensitive, with the exception being the word "NOT" that is used for terms where narrowing down the search is necessary. The following search terms may be used to conduct this type of search:

Recall Notice	"Notice of Recall"
Withdrawal Notice	"Notice of Withdrawal"
Notice of Adoption	"Notice of Rule Adoption"
Public Hearing Notice	"Notice of Public Hearing"
Change of Hearing	"Change in Notice of Public Hearing"
Notice of Intent	"Notice of Intent to Adopt a Rule"
Notice of Intent to Readopt	"Notice of Intent to Readopt"
IC 4-22-2-19 Notices	"60 Day Requirement"
IC 4-22-2-25 Notices	"One Year Requirement"

First Notice	"First Notice of Comment Period LSA" (Remove Notice of Readoption IC 13-14-9.5 (BN) from the document count)
Continuation of First Notice	"Continuation of First Notice of Comment Period LSA"
Second Notice	"Second Notice of Comment Period LSA" (This search total will include Findings and Determination of the Commissioner Pursuant to IC 13-14-9-7 and Second Notice of Comment Period)
Continuation of Second Notice	"Continuation of Second Notice of Comment Period LSA"
IDEM Findings	"Findings and Determination of the Commissioner Pursuant to IC 13-14-9-8 and Draft Rule LSA"
IDEM Readopt Notice	"Notice of Readoption IC 13-14-9.5"
IDEM Proposed Readopt	(Has not been posted since 2006)
IDEM Final Readopt	"IC 13-14-9.5 Notice of Final Readoption"
IDEM Fiscal Impact	"Fiscal Impact Statement LSA" (Has not been posted separately since 2011. Usually included in First Notice of Comment Period)
Other Notice	(Can't be found with the Advanced Search option)
Proposed Rule	"Proposed Rule LSA"
Readopted Proposed Rule	"Readopted Proposed Rule LSA"
Economic Impact Statement	"Economic Impact Statement"
Readopted Final Rule	"Readopted Final Rule LSA"
Final Rule	"Final Rule LSA" NOT "Readopted Final Rule"
Emergency Rule	"Emergency Rule LSA" NOT "Notice of Intent to Adopt an Emergency Rule"
Agency Correction	"Agency Correction"
Publisher's Correction	"Publisher's Correction"
Executive Order	(See other archive method)
Governor's Proclamation	"Proclamation to"
Governor's Request for Additional Time	"Extension of Time Request by Governor"
Disapproval by Governor	"Governor's Notice of Disapproval"
Gov's Objection to Errata	(Has not been posted since 2006)
Disapproval by Attorney General	"Attorney General's Notice of Disapproval"

Attorney General's Opinion	"Official Opinion"
Nonrule Policy Document	(Can't be found with the Advanced Search option)
Publisher's Receipts for Filed Documents	"Publisher's Receipt"
NDA	"Rule Activity Notice"

XXIII. INTERNATIONAL STANDARD SERIAL NUMBER

The International Standard Serial Number (ISSN) is a unique, internationally used identification number for serial publications. It is both a national (ANSI Z39.9) and an international (ISO 3297) standard. It can be thought of as the Social Security number of the serials world, distinguishing serials with the same or similar titles from each other and providing a numerical identifier which can be used to retrieve and match information about serials in databases of any size.

(From "ISSN is for Serials", Library of Congress, National Serials Data Program, September 2006)

The ISSN for the Indiana Register is ISSN 1934-7049.

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(Indiana Register, 12 IR 1466, March 1989)

FOR: REQUIRING THAT STATE AGENCIES CALCULATE THE FISCAL IMPACT OF PROPOSED RULES AND SUBMIT SUCH RULES TO THE STATE BUDGET AGENCY FOR APPROVAL.

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, promulgation of rules is essential for the implementation of legislation and other mandates for agencies of State government; and

WHEREAS, the Governor of the State of Indiana is required by I.C. 4-22-2-34 to approve or disapprove rules implementing legislative and other mandates for agencies of State government; and

WHEREAS, rules promulgated can have substantial fiscal impact on the budget of the State; and

WHEREAS, the Indiana State Budget Agency is responsible for administering the budget of the State and is responsible for ensuring that the expenditures of the State do not exceed available resources;

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of Indiana, IT IS HEREBY ORDERED:

Section 1. The Governor of the State of Indiana will not approve any rule pursuant to I.C. 4-22-2-34 unless the director of the Budget Agency either approves the proposed rule pursuant to Section 2 of this Executive Order or waives in writing the requirements set forth in Section 2 of this Executive Order.

Section 2. Prior to submission of any rule to the Revisor of Rules of the Code Revision Division of the Legislative Services Agency for publication in the Indiana Register, each State Agency (as defined in I.C. 4-22-3-3(a)) shall submit the proposed rule to the Indiana State Budget Agency, together with a written statement setting forth such State Agency's calculation of the estimated fiscal impact of such rule on State and local government in sufficient detail to permit the director of the Budget Agency to evaluate the accuracy of the calculation and the appropriateness of the methodology used in making such calculation. The director of the Budget Agency must approve such proposed rule prior to submission for publication under I.C. 4-22-2. If the Budget Agency does not approve the issuing agency's estimate of fiscal impact, the Budget Agency may either request a revised estimate from the issuing agency, or prepare its own estimate of the fiscal impact, or both. If such rule is amended or modified subsequent to Budget Agency approval pursuant to the preceding sentence or reapproval pursuant to this sentence, such amended or modified rule, together with a revised statement of its fiscal impact meeting the requirements of the first sentence of this Section 2 shall be resubmitted to the Budget Agency for approval.

Section 3. Any rule approved by the Governor in accordance with I.C. 4-22-2-34 shall be deemed to comply with the requirements of this Executive Order. The director of the Budget Agency may delegate his authority to approve or disapprove rules under this Executive Order.

Section 4. This Executive Order shall take effect January 18, 1989, and applies to any proposed rule which will appear in the March 1989 issue of the Indiana Register and all proposed rules thereafter.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the great seal of the State of Indiana, at the Capitol, in the City of Indianapolis, this 17th of January, 1989.

Evan Bayh, Governor of Indiana

SEAL

Joseph H. Hogsett, Secretary of State

Financial Management Circular 5.1

Office of Management and Budget Review of Agency Rulemaking – (FMC 5.1 – January 1, 2022)

Section 1 – Background: This Financial Management Circular (FMC) establishes the procedures the Office of Management and Budget (OMB) will use to implement IC 4-3-22-13, IC 4-22-2-28, and Executive Order 13-03, including the review of claimed exceptions to the Regulatory Moratorium and requirements to report on the proposed or pending use of rulemaking authority whose source is not within IC 4-22-2 or IC 13-14-9 (including emergency rulemaking authority).

IC 4-3-22-1 tasks OMB with, among other duties, the responsibility to "[a]scertain whether the burdens imposed by laws and rules are justified by their benefits using a rigorous cost benefit analysis." IC 4-3-22-13 and IC 4-22-2-28 require a cost-benefit analysis to be performed on each proposed rule and require OMB to provide an assessment of the impact on Indiana businesses of new rules to the Governor. "[W]herever possible, and without compromising the health and safety of Hoosiers, this review should result in the elimination or simplification of unnecessary or unduly burdensome rules and regulations so that private sector employment and new investment in Indiana increases and the quality of our Hoosier workforce improves." EO 13-03.

Section 2 – Procedure for Requesting OMB Approval: As established in Executive Order 13-03, the Regulatory Moratorium does not apply to:

- a) Rules to fulfill an objective related to job creation and increasing investment in Indiana or to improve the quality of Indiana's workforce;
- b) Rules that repeal existing rules or reduce their regulatory impact;
- c) Rules that implement a federal mandate and no waiver is permitted;
- d) Rules necessary to avoid a violation of a court order or federal law that would result in sanctions by a court or the federal government against the state for failure to conduct the rulemaking action;
- e) Rules to address matters pertaining to the control, mitigation, or eradication of waste, fraud, or abuse within a state agency or wasteful or abusive activities perpetrated against a state agency;
- f) Rules that reduce State spending; or
- g) Rules whose predominate purpose and effect are to address matters of emergency or health or safety, including the promulgation of an emergency rule under IC 4-22-2-37.1.

To receive a determination whether an exception applies to a proposed rule, the agency head shall submit a request in writing addressed to OMB via e-mail, sent to , which includes copies of the information required by this FMC. The agency head shall submit this request before filing a notice of intent to adopt a rule under IC 4-22-2 or a notice under IC 13-14-9.

OMB will provide a copy of the agency's submission to the Governor's Office and State Budget Agency (SBA) and coordinate with those entities to expedite their review and approval of the proposed rulemaking.

Section 3 – Required Information: In order to facilitate OMB's review of proposed rules, the request shall include the following information:

- a) Detailed summary of the proposed rule, including, but not limited to, the following:
 - i) a history and background of the rule;
 - ii) the reasons for the proposed rule;
 - iii) the statutory authority for the proposed rule;
 - iv) the statutory authority for the agency to promulgate the proposed rule;
 - v) a description of the existing legal framework governing the subject matter of the proposed rule with reference to all applicable statutes, regulations, and other legal provisions; and
 - vi) a description of any existing requirements regarding the subject matter of the proposed

- rule that are contained in agency policy, guidance, manual, contracts, or other sources outside of the legal provisions covered in subsection v above.
- b) Identification of the exceptions that the agency believes permit the agency to promulgate the rule notwithstanding the Regulatory Moratorium and a detailed explanation of why each identified exception applies;
- c) Fiscal Impact Analysis as described in FMC 5.2;
- d) Cost-Benefit Analysis as described in FMC 5.2;
- e) Copy of the proposed rule, if a draft is available;
- f) A redline of the changes made by the proposed rule from existing regulations, or an alternative form of identifying changes approved in advance by OMB;
- g) Any comments received from regulated entities or interested parties regarding the proposed rule if the agency received such comments;
- h) Contact information (name, phone number, email address) for an agency staff member who can answer substantive questions about the proposed rule and the underlying policy area.

This information will better equip OMB to review proposed rules to determine their eligibility for an exception under the Regulatory Moratorium and enable OMB to provide guidance to agencies as they navigate the process. This information will also expedite OMB review of proposed rules following publication of the notice of intent to adopt a rule in the Indiana Register by enabling OMB to provide substantive commentary on the proposed rule early in the rule-making process.

Section 4 – Items Required to be Contained in Regulation: The Administrative Rules and Procedures Act (ARPA) governs agency rulemaking, Ind. Code Art. 4-22. ARPA applies "to the addition, amendment, or repeal of a rule in every rulemaking action." IC 4-22-2-13(a). ARPA defines a "rule" as:

- the whole or any part of an agency statement of general applicability that:
 - (1) has or is designed to *have the effect of law*; and
 - (2) implements, interprets or prescribes:
 - (A) law or policy; or
 - (B) the organization, procedure, or practice requirements of an agency.

IC 4-22-2-3(b) (emphasis added). The procedural requirements of ARPA, however, do not apply to "[a] resolution or directive of any agency that relates solely to internal policy, internal agency organization, or internal procedure and does *not have the effect of law*." IC 4-22-2-13(c)(1) (emphasis added).

Case law has similarly defined an administrative rule as having the following four elements:

- (1) "an agency statement of general applicability to a class;"
- (2) that is "applied prospectively to the class;"
- (3) that is "applied as though it *has the effect of law*;" and
- (4) that "affect[s] the substantive rights of the class."

Villegas v. Silverman, 832 N.E.2d 598, 609 (Ind. Ct. App. 2005) (emphasis added) (citing *Blinzinger v. Americana Healthcare Corp.*, 466 N.E.2d 1371, 1375 (Ind. Ct. App. 1984)).

Thus, whether an agency requirement carries the "effect of law" is a key question in determining whether the requirement must be contained in regulation, and subject to the formal rulemaking process in ARPA, or may merely be contained in an internal policy or procedure and exempt from the formal rulemaking process. The Indiana Supreme Court has explained the "effect of law" standard as follows:

Weaving together this federal and state precedent, we observe a common thread— a rule carrying the effect of law primarily affects individual rights and obligations by setting binding standards of conduct for persons subject to its authority. This 'effect of law' concept manifests in everyday

situations where Hoosiers must conform their conduct to meet agency standards. To be sure, when an agency standard requires citizens to alter their behavior—i.e., when it regulates their conduct—it necessarily affects the citizens' rights or obligations because it compels them to do something they would not do otherwise or face legal consequences for noncompliance. And so that agency standard carries the effect of law. We therefore settle on the following summation of the phrase 'effect of law' for Indiana jurisprudence: An agency regulation carries the effect of law when it prescribes binding standards of conduct for persons subject to agency authority.

Ward v. Carter, 90 N.E.3d 660, 665 (Ind.), *cert. denied*, 139 S. Ct. 240, 202 L. Ed. 2d 161 (2018).

OMB can assist agencies with evaluating whether requirements carry the effect of law and must be contained in regulation or if they are internal procedures and may be contained in policy or other non-legal guidance.

Section 5 – Authority for Rulemaking: A key component of OMB's review of proposed rulemaking and cost-benefit analysis is the agency's authority for the proposed rulemaking. For example, costs in the proposed rule that are expressly required by the statute authorizing the agency to adopt the rule or any other state or federal law are excluded from the cost-benefit analysis because they are not actually imposed by the proposed regulation itself.

To assist OMB's review, the agency's discussion of the authority for the proposed rulemaking should identify which requirements in the proposed rule are:

- a) Expressly required by state or federal law and the citation of the requirement;
- b) Required by court order, consent decree, or in response to litigation and include the relevant court orders or agreement;
- c) A mandatory topic of regulation under State or federal law and the citation of the requirement;
- d) A permissible topic of regulation under State or federal law and the citation for the source of the authority;
- e) Within the general rulemaking authority of the agency the citation for the source of the authority; or
- f) Within an implied or other source of rulemaking authority and identify the source of the authority and explanation why it applies to the rulemaking.

Section 6 – OMB Review: The OMB shall issue a determination in writing regarding the applicability of an exception. Under normal circumstances, OMB should respond to an agency with a determination or comments and questions regarding the proposed rulemaking within 45 days of submission.

If the OMB determines no exception applies to a proposed rule, the Regulatory Moratorium suspends any formal rulemaking activity with regard to the proposed rule. Under these circumstances, the agency must not file a notice of intent to adopt a rule (under IC 4-22-2) or a notice under IC 13-14-9 with regard to the proposed rule.

If the OMB determines an exception applies to a proposed rule, the agency may file a notice of intent to adopt a rule (under IC 4-22-2) or a notice under IC 13-14-9 with regard to a proposed

rule. For a proposed rule that qualifies for an exception under the Regulatory Moratorium, all other applicable procedures under statute, Executive Order 2-89, and FMC 5.2 govern the promulgation of the proposed rule.



Zachary Q. Jackson, Director
State Budget Agency

Financial Management Circular 5.2

State Budget Agency Review of Agency Rulemaking (FMC 5.2 – January 1, 2022)

Section 1 – Applicability: This Circular applies to all rules and amendments or modifications to existing rules adopted by any state agency under Indiana Code § 4-22-2 et. seq. and § 13-14-9 et. seq.

Section 2 – Background: A sound regulatory analysis is designed to inform the agency conducting the rulemaking and the public of the effects of regulatory actions. In certain cases, the analyses required by this FMC will demonstrate that the proposed rules may not be necessary. In other situations, the analyses will validate that the rules are reasonable, necessary, and warranted.

IC 4-22-2-19.5 requires that, to the extent possible, rules shall minimize the expenses to regulated entities that are required to comply with the rule; persons who pay taxes or pay fees for government services affected by the rule; and consumers of products and services of regulated entities affected by the rule. IC 4-22-2-19.5 also requires that, in the adoption of a rule or amendment, an agency shall determine the least intrusive and most efficient regulatory choice for the rule or amendment.

Section 3 – Budget Director Approval: Pursuant to Executive Order 2-89, prior to the adoption of a rule by a state agency, the proposed rule or an amendment or modification to an existing rule must be approved by the Director of the State Budget Agency (SBA). In order to receive Budget Director approval, the agency must submit to SBA the information required by this FMC.

Following review and analysis of the agency's proposed fiscal impact statement and cost- benefit analysis, the OMB may accept the analyses for purposes of IC 4-3-22-13 and IC 4- 22-2-28, suggest revisions to the analyses, or reject the analyses.

If the agency amends or modifies the proposed rule subsequent to SBA approval and the fiscal impact is altered, pursuant to Executive Order 2-89, the agency must resubmit the proposed rule with the revised fiscal impact statement to the Budget Director through the agency's SBA budget analyst. Reapproval is required before the agency may continue with the rulemaking process.

This Circular does not alter the deadlines established for submission of proposed rules (or amendments or modifications to existing rules) to the Legislative Services Agency, for public hearings, or for submission to the Indiana Attorney General, the Indiana Register, and the Governor. If an agency provides information to the Legislative Services Agency (LSA) or Indiana Economic Development Corporation (IEDC) concerning the fiscal impact of a proposed rule or an amendment or modification to an existing rule, the agency shall provide copies of such information to the SBA.

Section 4 – Fiscal Impact Analysis: Prior to SBA approval of a rule under Executive Order 2- 89, the agency proposing the adoption of a new rule or the adoption of an amendment to an existing rule must complete and submit to SBA a fiscal impact analysis on state and local government. At a minimum, the fiscal impact analysis shall contain the following:

- a) A calculation of the estimated fiscal impact on state and local government;
- b) The anticipated effective date of the rule;
- c) Identification of any sources of revenue affected by the rule, the estimated increase or decrease in revenues or expenditures of state and local government that would result from the implementation of the rule, including the costs necessary to enforce the rule, and the related citation to the rule provision(s);
- d) Identification of any appropriation, distribution, or other expenditures of revenue affected by the rule and the related citations to the rule provision(s);
- e) Identification of the administrative impact to state and local governments, and the related citations to the rule provision(s);

- f) A determination concerning the extent to which the proposed rule creates an unfunded mandate on a state agency or political subdivision; and
- g) If the proposed rule is readopting an expiring rule, the agency shall also include the fiscal analysis relied upon at the time of its last adoption as well as a current review of the accuracy of that analysis.

Section 5 – Cost-Benefit Analysis: Prior to SBA approval of a rule under Executive Order 2- 89, the agency proposing the adoption of a new rule or the adoption of an amendment to an existing rule must complete and submit to SBA a cost-benefit analysis of the proposed rule or amendment. All cost-benefit analyses will be reviewed by the agency's SBA budget analyst and the Office of Management and Budget (OMB) pursuant to IC 4-3-22-13 and IC 4-22-2-28. This cost-benefit analysis shall replace and be used for all purposes under IC 4- 22-2 in lieu of the fiscal analysis previously performed by LSA under IC 4-22-2. At a minimum, the cost-benefit analysis shall contain the following:

a) **Statement of Need.** The agency shall provide a statement explaining the need for the rule including:

- i) An explanation as to whether the rule is intended 1) to address a federal or state statutory requirement; 2) to address an alleged market failure; and/or 3) to serve a public need, such as improving government processes or promoting public safety or health.
- ii) An estimate of the number of individuals and businesses affected by the rule.
- iii) An evaluation of the policy rationale or goal behind the proposed rule, including an analysis of the following:
 - 1) An identification of the conduct and its frequency of occurrence that the rule is designed to change;
 - 2) The harm resulting from the conduct that the rule is designed to change and the likelihood the conduct will continue to occur absent a rule change; and
 - 3) Whether and how the agency has involved regulated entities in the development of the rule.
- iv) A detailed description of the agency's methodology used in making the above determinations.

b) **Evaluation of Costs and Benefits.** The agency shall provide a comprehensive enumeration of the costs and benefits of the rule, including tangible and intangible costs and benefits. If costs and benefits cannot be monetized or quantified, the agency should explain why and include a thorough description of the non-quantifiable costs and benefits as well as a determination whether such costs and benefits will be significant. **The cost-benefit analysis should conclude with the agency's determination whether the benefits are likely to exceed the costs.** In reaching that determination, the agency should include the following factors in its analysis, or an explanation of why each factor is not applicable:

- i) An estimate of the primary and direct benefits of the rule, including the impact on consumer protection, worker safety, the environment, and business competitiveness;
- ii) An estimate of the secondary or indirect benefits of the rule and an explanation of how the conduct regulated by the rule is linked to the primary and secondary benefits;
- iii) An estimate of the compliance costs for regulated entities (including but not limited to individuals and businesses), including but not limited to the costs of fees, new equipment or supplies, increased labor and training, education, supervisory costs, and any other compliance cost imposed by the requirements of the rule;
- iv) An estimate of the administrative expenses, including but not limited to any legal, consulting, reporting, accounting or other administrative expenses imposed by the requirements of the rule;
- v) An estimate of any cost savings to regulated entities (including but not limited to individuals and businesses) as a result of the proposed rule, however, the agency shall note whether such savings are from a change in an existing requirement or the imposition of a new requirement; and

- vi) Identification of any requirements expressly required by the statute authorizing the agency to adopt the rule or any other state or federal law, which are therefore excluded from the cost-benefit analysis discussed above.

To aid in identifying costs and benefits, the agency should consult economic theory, previous academic or internal agency research, scenarios developed while defining the statement of need and policy rationale for the proposed rule; collaborate with colleagues within and outside the agency and consult with the public and regulated entities; and provide sufficient justification for the agency's methodology in making the above determinations.

c) **Examination of Alternatives.** The agency should include in its analysis an evaluation of alternatives to achieve the objectives of the proposed rule or amendment. The following list of additional alternatives shall also be considered for the rule including:

- i) Alternatives defined by statute. Is the rule consistent with the specific statutory requirement and clearly within the agency's statutory discretion?
- ii) The feasibility of market-oriented approaches, including a determination whether the market could eventually remedy the alleged harm the rule is intended to regulate, rather than direct controls.
- iii) Measures to improve the availability of information, as an alternative to regulation.
- iv) If applicable, various enforcement methods, such as inspections, periodic reporting, and non-compliance penalties.
- v) Performance standards rather than design standards. Performance standards express requirements in terms of desired outcomes. Design standards express requirements in terms of the specific means that must be satisfied without choice or discretion.
- vi) Different requirements for different sized regulated entities. A variation of benefits and costs may exist depending on the mix of entities being regulated.
- vii) Establish a baseline. It is often helpful to establish a baseline for the cost-benefit analysis as a source of comparison. Consider how the world would look without the proposed rule. Issues to consider when forming a baseline include evolution of the market, changes in external factors affecting expected costs and benefits, existing rules by the agency and other government entities, and the degree of compliance by regulated entities with other rules. Note that such an analysis cannot assume that the rule will be adopted.
- viii) Different compliance dates. And,
- ix) Redundancy. Per IC 4-22-2-19.5, consider whether the proposed rule duplicates standards already found in state or federal law.

d) A determination as to whether the proposed rule will have a total estimated impact greater than \$500,000 on all regulated persons (IC 4-22-2-28). The agency shall describe here the data used and assumptions made in making that determination.

e) Independent verification or studies to support the policy rationale and types and quantifications of the costs and benefits.

f) The sources relied upon in determining and calculating the costs and benefits.

Section 6 – Rule Submission Documents: Prior to SBA approval of a rule under Executive Order 2-89, the agency proposing the adoption of a new rule or the adoption of an amendment to an existing rule must complete and submit to the Budget Agency:

- a) **The Notice of Intent.** When the agency files its Notice of intent with LSA under IC 4-22-2-23 (or any notice under IC 13-14-9-3; IC 13-14-9-7; or IC 13-14-9-8, if applicable), the agency shall simultaneously provide SBA with a copy of the Notice;
- b) **Small Business Economic Impact Statement** under IC 4-22-2.1; and

c) The proposed or draft rule.

Section 7 – Expedited Review: In addition to the documents listed above, the agency may also submit a request that SBA conduct an expedited review of the proposed rule. Such request may be granted under limited circumstances, including, but not limited to, adoptions or incorporation by reference of federal law, regulations or rules that are applicable to Indiana and contain no amendments that have a substantive effect on the scope or intended application of the federal law or rule; technical amendments with no substantive effect on an existing Indiana rule; or if the proposed rule has no fiscal impact to the state and local governments. The decision to expedite the review of a proposed rule shall be within the discretion of the SBA.



Zachary Q. Jackson, Director
State Budget Agency

Attorney General Review of Administrative Rules

MEMORANDUM -- Revised August 30, 2016

The purpose of this document is to clarify what must be included when a Final Rule is submitted to the office of the attorney general for review.

IC 4-22-2-31 provides:

"After an agency has complied with section 29 of this chapter, or with IC 13-14-9-9(1) or IC 13-14-9-9(2), as applicable, the agency shall submit its rule to the attorney general for approval. The agency shall submit the following to the attorney general:

- (1) The rule in the form required by section 20 of this chapter.
- (2) The documents required by section 21 of this chapter.
- (3) Written authorization to proceed issued by the publisher under section 24(g) of this chapter.
- (4) Any other documents specified by the attorney general.

The attorney general may require the agency to submit any supporting documentation that the attorney general considers necessary for the attorney general's review under section 32 of this chapter. The agency may submit any additional supporting documentation the agency considers necessary."

Following adoption of the rule, the agency compiles the following materials into one (1) solid colored folder or binder for submission to the office of the attorney general:

- (1) A rule signature page in the plastic sleeve containing the rule CD-ROM, signed by the appropriate authority, body, or both, along with the one (1) rule CD-ROM (with the rule in Word or WordPerfect format) contained in a 3-hole- punched plastic sleeve, followed by a divider.
- (2) One (1) copy of all supporting documentation (see STEP 15 of Section XVIII.), followed by another divider.
- (3) A copy of any materials incorporated by reference (electronic or hard copy).

Supporting documentation in the rule folder or binder should include the following:

- (1) Printed from the Indiana Register (IR):
 - (A) Notice of Intent (NI);
 - (B) Proposed Rule (PR);
 - (C) Economic Impact Statement (EI); and
 - (D) Notice of Public Hearing (PH) (including any Changes in Notice of Public Hearing (CH)).
- (2) Authorization to Proceed from the IR.
- (3) Publisher's affidavit and a copy of the public hearing notice published in the Indianapolis Star (and any other newspapers as applicable).
- (4) State Budget Agency approval letter.
- (5) If the rule imposes costs or requirements on small businesses (see IC 4-22-2.1-4; IC 4-22-2.1-6; IC 4-22-2-28), the following:
 - (A) Cover letter or other documentation showing that the EI was submitted to the small business ombudsman.
 - (B) Comments from the small business ombudsman (comments must also be available on the agency's website and at the public hearing).
 - (C) Printout of the web page with the small business ombudsman comments.
 - (D) Agency response to the small business ombudsman's comments.
- (6) If the rule will have a total estimated economic impact greater than five hundred thousand dollars (\$500,000) on all regulated persons or entities in the first twelve (12) month period after the rule is fully implemented (See IC 4-22-2-28), the following:
 - (A) Economic impact analysis submitted to the Office of Management and Budget (OMB).

- (B) Fiscal Impact Statement prepared by OMB, or OMB statement that the agency analysis was adopted.
- (C) If the rule will not have a five hundred thousand dollar (\$500,000) impact, a statement to that effect should be included in the supporting documentation.
- (7) Cover emails for any transmittal to the Legislative Council (See IC 4-22-2-28(h) and IC 4-22-2-28(i)).
- (8) Public comments, including any written comments and a transcript or minutes of the public hearing. If no members of the public appeared at the public hearing, a statement of the hearing officer is sufficient.
- (9) Agency response to public comments.
- (10) If the FR is not identical to the PR, a description of all changes.
- (11) Record of action by any board, commission, or other body that must adopt or approve the rule. The record should include minutes, transcripts, or a statement signed by the chair or other authorized representative.
- (12) Printout of the most current version of the rulemaking docket (See IC 4-22-2-22.5)
- (13) If the rule will not be signed by the governor within one (1) year of publication of the NI, a copy of the notice to the Publisher required under IC 4-22-2-25 that was filed before the 250th day following the publication of the NI.
- (14) Any other notices or documents published in the IR.

Following approval of the office of the attorney general, the rule will be delivered as a courtesy to the agency to the governor's general counsel for final approval. From the governor's office, the rule will be delivered to the Publisher as a courtesy to the agency. Note that statute allows the Publisher up to three (3) days to review, accept, and officially file the rule. This may impact certain statutory deadlines for certain rules, and, if that is the case, the agency needs to ensure that deadlines are appropriately communicated to the Publisher.

Emergency Rules, Agency Corrections, and Final Readoptions do not go through the same approval process as normal rules. To the extent feasible, follow the same procedures used for FRs. Statute still requires these rules to be submitted electronically (Word or WordPerfect format) to the Publisher, and it makes the most sense for them to be delivered in a similar format as normal rules. For further reference, see IC 4-22-2-37.1, IC 4-22-2-38, and IC 4-22-2.5.

For additional detail of rulemaking requirements and procedures, refer to IC 4-22-2, IC 4-22-2.1, and this guide.

Signature Pages for Documents Filed with the Publisher:

SAMPLE (FOR USE WITH FINAL RULES):

Rule Signature Page

Rule #: LSA Document #xx-xxx(F)
Agency: XYZ Agency, Board, or Commission (Entity w/Rulemaking Authority, i.e. State Board of Cosmetology and Barber Examiners; Indiana Gaming Commission)
Subject: i.e. – Regulations re: Widget use in Indiana

ADOPTED:

By: _____ Date: _____
Jane Doe
Title or Position w/Agency, Board, and/or Commission
XYZ Agency

APPROVED AS TO FORM AND LEGALITY:

By: _____ Date: _____
Attorney General, State of Indiana

APPROVED:

By: _____ Date: _____
Governor, State of Indiana

ACCEPTED FOR FILING:

By: Indiana Register
Legislative Services Agency

SAMPLE (FOR USE WITH EMERGENCY RULES):

Rule Signature Page

Rule #: LSA Document #xx-xxx(E)
Agency: XYZ Agency, Board, or Commission (Entity w/Rulemaking Authority, i.e. State Board of Cosmetology and Barber Examiners; Indiana Gaming Commission)
Subject: i.e. – Emergency regulations re: Widget use in Indiana

ADOPTED:

By: _____ Date: _____

Jane Doe
Title or Position w/Agency, Board, and/or Commission
XYZ Agency

ACCEPTED FOR FILING:

By: Indiana Register
Legislative Services Agency

SAMPLE (FOR USE WITH FINAL READOPTIONS):

Rule Signature Page

Rule #: LSA Document #xx-xxx(F)
Agency: XYZ Agency, Board, or Commission (Entity w/Rulemaking Authority, i.e. State Board of
Cosmetology and Barber Examiners; Indiana Gaming Commission)
Subject: Final Readoption

ADOPTED:

By: _____ Date: _____

Jane Doe
Title or Position w/Agency, Board, and/or Commission
XYZ Agency

ACCEPTED FOR FILING:

By: Indiana Register
Legislative Services Agency

SAMPLE (FOR USE WITH AGENCY CORRECTIONS):

Signature Page

Rule #: LSA Document #xx-xxx(AC)
Agency: XYZ Agency, Board, or Commission (Entity w/Rulemaking Authority, i.e. State Board of
Cosmetology and Barber Examiners; Indiana Gaming Commission)
Subject: Agency Correction

ADOPTED:

By: _____ Date: _____

Jane Doe
Title or Position w/Agency, Board, and/or Commission
XYZ Agency

ACCEPTED FOR FILING:

By: Indiana Register
Legislative Services Agency

NOTE: For Agency Corrections to the Indiana Administrative Code, the LSA document number will be assigned when the document is filed with the Publisher.

APPENDIX A

INDEX FOR THE ADMINISTRATIVE RULES DRAFTING MANUAL

NOTE: This index was prepared for use with the Administrative Rules Drafting Manual at:
<http://iac.iga.in.gov/iac/IACDrftMan.pdf>

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APPENDIX B

ATTORNEY GENERAL'S OPINIONS (LIST)

[NOTE: Attorney General's Opinions preceding #78-7 were not published in the Indiana Register.]

Click [HERE](#) to view or print, or both, the list of Attorney General's Opinions.

APPENDIX C

EXECUTIVE ORDERS AND PROCLAMATIONS (LIST)

[NOTE: Executive Orders preceding #78-16 were not published in the Indiana Register.]

[NOTE: Proclamations issued under IC 1-1-3-2 are published in the Indiana Register.]

Click [HERE](#) to view or print, or both, the list of Executive Orders and Proclamations.

APPENDIX D

ATTORNEY GENERAL'S RULE REVIEW CHECKLIST

Click [HERE](#) to view or print, or both, the Rule Review Checklist that was provided at the Rulemaking Seminar on August 30, 2016, organized by the Office of the Indiana Attorney General.

APPENDIX E
LEGISLATIVE COUNCIL RESOLUTION 14-05
(As Adopted May 14, 2014)

BE IT RESOLVED BY THE INDIANA Legislative Council:

SECTION 1. (a) The following definitions apply throughout this resolution:

(1) "Executive Director" refers to the Executive Director of the Legislative Services Agency.

(2) "Public agency" includes the following:

(A) The judicial branch of state government.

(B) A state agency (as defined in IC 4-13-1-1).

(C) A body corporate and politic created by statute.

(D) A state educational institution.

(3) "Report" includes any annual or other report that is subject to IC 5-14-6 that a public agency:

(A) voluntarily; or

(B) under a statutory directive;

submits to the entire membership of the General Assembly, the Legislative Services Agency, the Legislative Council, or a committee established under IC 2-5-1.3-4.

SECTION 2. The Legislative Council exercises its authority under IC 5-14-6-4, as amended by SEA 80-2014, SECTION 67, to provide for the Legislative Services Agency to make electronic distribution of reports to:

(1) the entire membership of the General Assembly;

(2) the Legislative Services Agency;

(3) the Legislative Council; or

(4) a committee established under IC 2-5-1.3-4;

instead of having the public agency submitting the report directly distribute the report to the member's Senate or House of Representatives electronic mail address, as otherwise required by statute.

SECTION 3. The Executive Director is directed to establish an email address or a portal on the Internet to receive reports and post received reports to the Internet Web site for the General Assembly. A public agency shall be treated as complying with a duty imposed under a statutory directive to distribute reports to:

(1) the entire membership of the General Assembly;

(2) the Legislative Services Agency;

(3) the Legislative Council; or

(4) a committee established under IC 2-5-1.3-4;

when the public agency submits the report in Portable Document Format (PDF) to the email address or Internet portal designated by the Executive Director. The Executive Director may set additional guidelines for the submission of reports.

SECTION 4. The Executive Director shall provide for periodic electronic notification:

(1) that a report has been received; and

(2) where it is posted on the Internet;

to the legislators designated to receive the submitted report. The notification may be made to an email address other than the member's Senate or House of Representatives electronic mail address, as otherwise required by statute, if requested by the legislator. The Executive Director may also electronically distribute to a legislator the full text of any report. The Executive Director shall electronically distribute the full text of a report to a legislator if requested by the legislator or as directed by the Personnel Subcommittee of the Legislative Council.

SECTION 5. The Executive Director may receive, post, and distribute any document that is required by a statutory directive to be submitted under or is otherwise subject to IC 5-14-6, regardless of whether the submitting entity qualifies as a public agency or the submitted document qualifies as a report.

*